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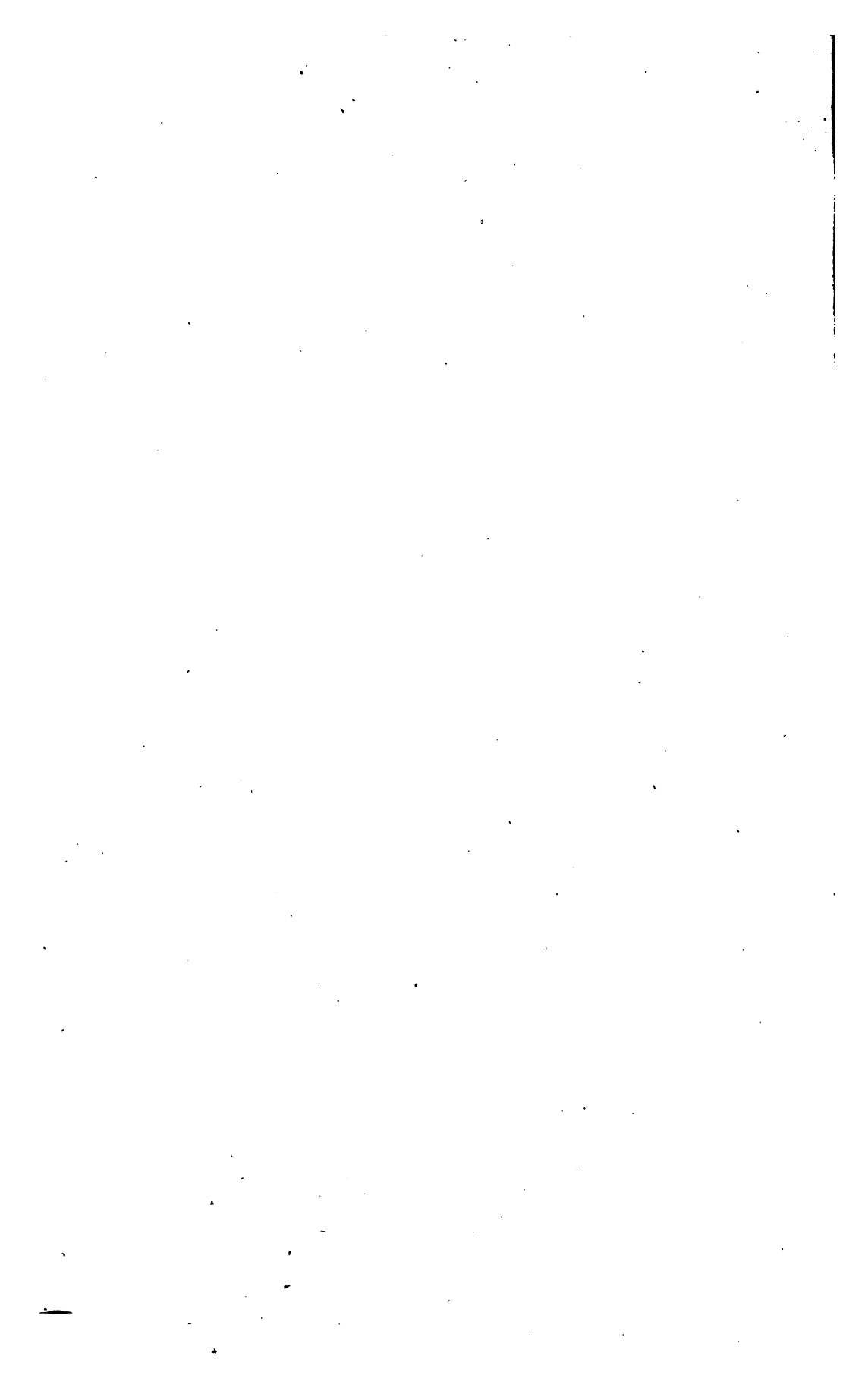
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B. Boucher
1st January 1820.

AN

ANALYSIS,

ARRANGED TO SERVE ALSO AS

A COMPENDIOUS DIGESTED INDEX

OF

MR. FEARNE'S ESSAY

ON

**CONTINGENT REMAINDERS AND
EXECUTORY DEVISES,**

AND OF

MR. BUTLER'S NOTES.

By RICHARD HOLMES COOTE, Esq.
OF LINCOLN'S INN.

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1814.

Davidson,
Old Bowell Court

TO CHARLES BUTLER, Esq.

DEAR SIR,

The ready permission which you gave me of sanctioning the following Work with your name, has greatly added to the many obligations for which I am already indebted to you. You have not only favored me with your fostering protection on my entrance into professional life, but have also kindly given your countenance to the first performance (humble as it is) which I have presumed to offer to the profession.

It would appear too much like vanity in me, to enumerate the frequent acts of kindness which I have received at your hands; but I cannot omit this opportunity of publicly assuring you, that amongst the many, who have had the great advantage of your instruction, and subsequent support and patronage, there is not one who is more grateful for those favours, than,

Dear Sir,

Your very obliged and faithful servant,

RICHARD HOLMES COOTE.



PREFACE.

IN submitting the following Work to the Profession; the author is anxious for its favourable reception.

Simple as the arrangement may seem, the difficulties attending the compilation have been considerable: and in an attempt to compress and simplify the many abstruse points of learning contained in Mr. Fearne's profound and valuable Essay, and in the Notes of the eminent lawyer, the editor of the last edition; and at the same time to supply the want of a regular and compendious Index, (a want so universally acknowledged and felt by the Profession), the author is fearful, that it may be thought, he would have done better to have left the task to abler hands.

As some apology for his presumption (if such it be) the author has to plead, that the subject was first undertaken at the suggestion of the last learned editor himself; and he begs to say, that such have been the difficulties of arrangement and classification, (embracing more than 150 subjects, many of them of the most intricate doctrine), and of interweaving the notes with the text under the several heads, that, had not the greater part of the Work been written when his time was more at his command than at present,

PREFACE.

he doubts whether, in this instance at least, he should have had occasion to claim the indulgence of the Profession, to which he has the honour to belong. There was, therefore, little reason to hope, that any one, whose time was still less upon his hands, would be induced to undertake the labour.

For the errors which may be discovered, and which the author trusts are not numerous or material, he has to plead the nature of the attempt; he cannot charge himself with any want of due attention to render the work perfect: yet, notwithstanding all his care, some omissions or inadvertencies may occur. For them, as well as for his Work at large, he can only say, that it will be with no small degree of gratitude, he shall receive any communications which may be condescendingly offered to him on the subject.

He cannot avoid adding that he trusts, he is not saying too much, when he ventures to express a hope, that the student may, by a perusal of the more abstruse points comprised in this Analysis, find his path considerably cleared for him, when he enters upon the difficult study of the Essay itself.

Lincoln's Inn,
Easter Term, 1814.

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ANALYSIS,

&c.

ABEYANCE.

THE inheritance may be in abeyance, if there is no person known or seen in whom it can vest; and, in some instances, an act of parliament has been found necessary to remedy the defect. Per Ld. Hardwicke, in *Cunningham v. Moody*, 1 Vesey, 174.

F. 227

But it is now decided, that during a contingency on a conveyance to uses, (*Davies v. Speed*, Carthew, 262.) and also during a contingency by devise, (*Carter v. Barnardiston*, 1 Peere Wms. 517.) there is no abeyance; and the inheritance will, during the contingency, (in the first instance) remain in the grantor and his heirs, and (in the second instance) will descend to the heir of the testator.

F. 353

F. 354

Yet many doubts have prevailed, as to abeyance, in the case of a contingency by a conveyance at common law.

F. 360

And Lord Chief Baron Gilbert, in such case, inclined to the doctrine of abeyance.

F. 362

And even in the case of a contingency by devise, the master of the rolls, in *Carter v. Barnardiston*, *supra*, and Lord Talbot, in *Vick v. Edwards*, 3 Peere Wms. 372. inclined towards that doctrine.

F. 354

F. 356

But whether the contingency be by conveyance at common law, or under the statute of uses, or by devise, the doctrine of abeyance now seems hardly sustainable.

F. 361

ACCUMULATION.

It was a rule in equity, that a testator might direct the rents and profits of lands to be accumulated during a life or lives in being, and 21 years after, but no longer.

B. 537

And, therefore, in the case of *Lade v. Holford*, 3 Burr. 1416. a proviso for the dry accumulation of rents for 26 years was held void.

B. 532

But, however, (since the case of *Thellusson v. Woodford*, 11 Vesey, Jun. 112.) the act of the 39 & 40 of Geo. 3. c. 98. has been passed.

B. 538

By force of which, the accumulation of rents cannot now exceed,

1st. The life of the party ; or,

2ndly. 21 years from his own death ; or,

3dly. The minority of any person living at the time of the testator's death, or then *en ventre sa mere* ; or,

B. 539

4thly. The minority of any person, who would be entitled if of age.

Except,

1. For the payment of the debts of the grantor, settlor, or devisor, or of any other person.

B. 540

2. For raising portions for any child of the grantor, settlor, or devisor, or of any person taking an interest under the conveyance, settlement, or will ; and,

B. 541

3. In case of directions for the growth of timber.

B. 541

And it has been determined, that the time of accumulation may be apportioned, and part be good, part bad. *Griffiths v. Vere*, 9 Vesey, Jun. 127.

B. 541

ACT OF PARLIAMENT.

Where an act of Parliament is obtained for confirming a will, in which is contained a trust executory, the Court of Chancery will (notwithstanding the act) direct a conveyance to be made, so as best to answer the intent of the testator, and not according to the wording of the will. *The Earl of Stamford v. Hobart*, 3 Brown's P. C. 31. 8vo. ed.

F. 120

ACTION, RIGHT OF.

A right of action in respect of a preceding estate of freehold, will not support subsequent contingent remainders, although a right of entry will.

F. 286

As, if tenant for life be disseised, his right of entry will support the contingent remainders; but if the disseisor continue in peaceable possession for five years, and afterwards die, the contingent remainders will be gone. See ENTRY RIGHT OF, and DESCENT.

B. 286

ADVANCEMENT.

An assignment of a contingent interest for the advancement of a child, will be supported in

equity against a mere volunteer, but not against F. 549
creditors. *Wright v. Wright*, 1 Vesey, 409. F. 551

ADVOWSON.

Coparceners, tenants in common, or joint tenants, may make partition to present by turns to an advowson; and each will be seized of his or her separate part, under the statute 17 Anne, c. 18. F. 527

But a devise of an advowson to the first son of B. who shall be in holy orders, will be void for remoteness. *Proctor v. the Bishop of Bath and Wells*, 2 H. Black. 358. B. 509

AGREEMENT.

An agreement, by an heir at law, to settle lands which may descend to him from his ancestor, or an agreement to divide legacies, which may be given by the will of A. will be established by a court of equity. *Hobson v. Trevor*, 2 Peere Wms. 191. *Beckley v. Newland*, 2 Peere Wms. 182. F. 551
F. 550

ALIENATION.

A tenant in tail cannot be restrained from suffering a common recovery, or levying a fine with proclamations. *Mary Portington's case*, 10 Rep. 36. F. 258

But he may be restrained from doing any tortious act, which will work a discontinuance, such as a feoffment or a fine at common law. *Croker v. Trevithen*, Croke, Eliz. 35. F. 260

Yet a proviso, that tenant in tail shall not attempt, procure, go about, or assent to any act to work a discontinuance, will be void for uncertainty. *Mildmay's case*, 6 Rep. 40. F. 255

Lessees may be partially or wholly restrained from aliening. B. 249

And a voluntary grant of an annuity may be made to cease on alienation. *Dommet v. Bedford*, 6 T. R. 684. and 3 Ves. Jun. 149. B. 250

And even a life interest in personalty, under a settlement, may also be made to cease on alienation. *Lockyer v. Savage*, 2 Stra. 947. B. 250

But it should seem, that the benefit of the proviso, in the last-mentioned case, must be for the person from whom the property moves. B. 250

And see ANNUITY, BANKRUPTCY, LANDLORD AND TENANT, LEASES, and SETTLEMENT.

And in general, in a will or voluntary gift, a proviso may be engrafted for determining the life interest on alienation. B. 250

ANCESTOR.

See FREEHOLD, HEIRS, LIMITATION, REVERSION, RULE IN SHELLEY'S CASE.

ANNUITY.

The bequest of an annuity may be made to cease on alienation. *Dommett v. Bedford*, supra. B. 250

And in fact, an annuity may be so limited as not to be liable to be attached by creditors at law or in equity, as in the case of a devise of

lands to trustees, for a term of years upon trust, according to their will and pleasure, and not otherwise, to pay an annuity to A. B. until scheduled debts were paid, and to apply the residue in payment of the debts. *Davison v. Foley*, 2 Brown's C. C. 203.

B. 250

APPOINTMENT.

If, under a power of appointment, a part of a fund is appointed to one child, he will be entitled to a share in the residue, unless the contrary be expressly provided for. *Alexander v. Alexander*, 2 Ves. 640. and *Bristow v. Warde*, 2 Ves. Jun. 336. and see POWERS.

B. 558

ARMS, CLAUSE COMPELLING THE TAKING OF.

In the formation of this clause, care should be taken to express, that on breach of the proviso the estate tail shall cease; as if the party entitled were dead, and there were a general failure of issue inheritable under the entail.

B. 254

ARTICLES OF AGREEMENT BEFORE MARRIAGE.

Articles of agreement before marriage, are considered, by the Court of Chancery, as being entered into by the parties for a valuable consideration.

F. 112

And the issue are considered as purchasers for such a consideration.

F. 112

And in decreeing an execution of the articles, the court will not consider itself bound by the rule in *Shelley's case* (which see), but will, in the case of a limitation to the parents for life, with remainder to the heirs of their bodies, deem the word "heirs" to be a word of purchase. *Trevor v. Trevor*, 1 Eq. Ab. 387. 1 Peere Wms. 622. F. 90

And it is the same, whether the articles be for settling the husband's or wife's estate. *Jones v. Laughten*, 1 Equity Ab. 392. F. 93

Or if the agreement be for limiting the estate to the parents for life, with remainder to the heirs of *both* their bodies. *Cusack v. Cusack*, 2 Brown. P. C. 116. 8vo. ed. F. 93

But the doctrine does not seem to extend to the case of an estate tail in the wife, in an estate moving from the husband, which being *ex provisione viri*, the wife cannot, under the stat. of H. 7. bar without the consent of her husband. F. 94

And this latter was anciently a common mode of settlement. *Highway v. Banner*, 1 Brown. C. C. 584. F. 96

And in a case wherein there were two sets of limitations, evidencing an intention in the parties, that the one set should be in strict settlement, and the other not, the court would not interfere in the latter set. *Chambers v. Chambers*, Fitzgibb. 127. F. 96

And if a settlement be made after marriage, contrary to the intent of the articles, the court will rectify the settlement. *Legge v. Goldwire*, Cases temp. Talbot, 20. F. 107

But not, if both the articles and settlement be previous to marriage. F. 107

Unless the settlement before marriage shall be declared to be *in pursuance of the articles*, thereby indicating that the intention of the parties is not changed. *Honor v. Honor*, 2 Vern. 658.

F. 98

Nor will the court, in the case of limitations in articles to heirs male, with remainder to "heirs of the body," direct, on failure of issue male, a limitation to "daughters" in strict settlement, if the daughters are provided for by the articles. *Powell v. Price*, 2 Peere Wms. 535.

B. 102

But if the limitation be to heirs female, as contradistinguished from heirs male, and there be no provision for daughters, it seems the court will interfere. *West v. Errissey*, 2 Peere Wms. 349.

B. 100

But the court will not, in any of the cases, relieve against a purchaser for a valuable consideration and without notice. *Warwick v. Warwick*, 3 Atk. 291.

F. 109

And to induce the court to vary the settlement, the articles must be produced.

F. 109

Nor will the court otherwise relieve, even although the articles be recited in the settlement. *Cardwell v. Makrill*, Amb. 515.

F. 109

Nor is there any case, but where there are articles as well as a settlement, in which the court will construe words making a legal estate tail to be carried into strict settlement. *Warwick v. Warwick*, *supra*.

F. 109

But see COPYHOLDS; and see HEIRS, ISSUE, SETTLEMENT.

ATTAINDER.

In the case of the attainder of A. who was covenantor to uses and tenant for life, with the next vested remainder in B. for life, with contingent remainders over, it was held that the contingent remainders were destroyed, on the ground, it seems, that as the crown cannot stand seized to an use, there was no seisin to serve the contingent remainders, when they should come into esse. *Sir Thomas Palmer's case*, Moor, 815. and see "Scintilla Juris." F. 282

But if A. had not been covenantor to uses, as well as tenant for life, there is no doubt that his attainder would not, in the above case, have destroyed the contingent remainders subsequent to the next vested estate of freehold. *Corbet v. Tichborne*, 2 Salk. 576. F. 283

For the estate of the vested remainder man, was not thereby turned to a right. F. 283

And he might, on the decease of the first tenant for life, have entered. *Linch v. Coote*, 2 Salk. 469. F. 283

General office found will presume a fee. F. 283

But the 33d of Henry 8. cap. 8. which vests estates of persons attainted of high treason, in the crown, without office found, confers on the crown such estate only as if a special office had been found, that is, such an estate only as the person attainted had. *Linch v. Coote*, supra. F. 283

BANKRUPTCY.

A condition of re-entry may be reserved to a landlord on the tenant's committing an act of bankruptcy. *Roe v. Galliers*, 2 T. R. 133. B. 249

And in the case of the bequest of an annuity to cease on alienation, bankruptcy will determine it. *Dommet v. Bedford*, 6 T. R. 684. and 3 Ves. Jun. 149. B. 250

And in the case of the settlement of the wife's personal estate, in trust for the husband for life, and if he failed, to be applied for the maintenance of the wife and issue, the limitation over, on bankruptcy by the husband, was held good. *Lockyer v. Savage*, 2 Stra. 947. B. 250

BARGAIN AND SALE.

A bargain and sale is a real covenant, and has operation only under the statute of uses, and not at common law; and if executed by tenant for life will not destroy contingent remainders. B. 417 F. 322

Unless it be made by tenant for life to the next vested remainder man or the reversioner, or unless by the tenant for life jointly with the next vested remainder or the reversioner. B. 322

For in each of the latter cases, if the estates are *legal*, the intermediate contingent remainders will be destroyed by the union of the estates. B. 322

BARON AND FEME.

If an estate be limited to baron and feme

jointly, they will take by entireties, and there will be no moieties between them. F. 317
F. 36

And, therefore, if an estate be limited to husband and wife jointly, and to the heirs of the body of the husband, a recovery against him by single voucher will not bar the issue or remainder men. *Owen's case*, Moor, 210. F. 36

Yet a feoffment by him will in such case be a discontinuance of his estate tail. Cro. Car. 320. F. 36

If a limitation be to feme for life, with remainder to her first and other sons successively in tail male, and before the birth of a son, the reversion is conveyed by fine to the baron and feme, the feme may after the death of the baron waive the estate taken by the fine. *Purefoy v. Rogers*, 4 Mod. 284. F. 317

But the *possibility* will not support the contingent remainder. F. 318

If a husband bequeath to his wife the use of his household goods, &c. for life or widowhood, the wife will not be barred of her paraphernalia. *Marshall v. Blew*, 2 Atk. 217. F. 407

And she may let the goods out for hire. F. 407

Unless they are annexed to a house as heir looms. F. 408

But even in that case, she may let them *together with* the house. F. 408

And it should be remarked, that it seems, from the case of *Roberts v. Dixwell*, 1 Atk. 607. an equitable estate tail in the wife is not inconsistent with a trust for her separate use; nor will such separate trust of the freehold merge in the general trust of the inheritance. F. 56

And see DOWER, LIMITATION, RULE IN SHELLEY'S CASE.

JUDGE BLACKSTONE'S
*Explanation of the Exceptions to the Rule in
Shelley's Case.*

In the case of *Perrin v. Blake*, 4 Burr. 2579. Judge Blackstone shewed that there were but four instances, in which a limitation to heirs of the body had been taken as words of purchase, viz.

F. 187

1st. Where no preceding estate of freehold was limited to the ancestor.

2dly. Where no estate of inheritance was given to the heir.

3dly. Where explanatory words were subjoined to the word "heirs;" and,

4thly. Where a new estate was engrafted on the word "heirs, &c."

BUTLER, MR.

His Opinion on the Rule in Shelley's Case.

Mr. Butler, in his note 1 Co. Litt. 376 b. shews, that if in a devise, the words "heirs of the body" should, after a preceding estate of freehold in the ancestor, be read as meaning first and other sons, or as vesting the inheritance in the first person who should answer the description of heir, &c. and confining the descent to his heirs, (as a purchaser) the testator's intent would not in general be answered; and that a long series of adjudications prevent the limitation's being in such case considered as creating a *quasi* descent, (which see.)

B. 189

But that if the intention be apparent to limit

the estate in either of the two first mentioned modes, no rule of law or equity will prevent that construction.

B. 190

CESTUI QUE TRUST.

Cestui que trust for life cannot, by feoffment or other conveyance, commit a forfeiture or destroy contingent remainders. *Penhay v. Hurrell*, 2 Freeman, 213.

F. 321

CHANCERY, COURT OF.

See EQUITY.

CHATTELS.

It was once considered, that a chattel was incapable of bearing any limitation over.

B. 4

And even now, a remainder, strictly speaking, cannot be limited thereon.

B. 4

But a restricted interest for life may be now limited therein by will, and by way of trust. *Dewey v. Baynton*, 6 East, 257. and *Lady Arundell v. Phipps* and *Taunton*, 10 Ves. Jun. 139.

B. 407

Although, in the case of a bequest, every subsequent limitation must be executory, and be liable to the rules, by which that mode of limitation is regulated.

B. 401

Formerly a distinction was taken between a bequest of the use of a chattel during life, with an executory bequest over, and a bequest of the chattel itself with an executory bequest over; the first being deemed good, the latter void. Cro. Car. 346.

F. 402

But this distinction is now exploded. *Man-*

ning's case, 8 Rep. 187. and *Hyde v. Parratt*, F. 403
1 Peere Wms. 1. F. 406

And the bequest over is good, whether the
ulterior devisee be in esse or not, if within the
limits prescribed by law. *Cotton v. Heath*, 1
Roll. Ab. 612. pl. 3. F. 403

And the delivery of the chattel by the execu-
tors to the first taker, will vest the whole legal
interest in him, and divest the whole estate from
the executors. F. 412

But the law affords a legal remedy for the ul-
terior devisee of a chattel real, when his interest
commences, if there be not the interposition of
a trustee. *Manning's case*, supra, and *Lampet's*
case, 10 Rep. 46. F. 413

And equity will protect him, if there be. F. 413

But the limitation of a chattel interest to a
person in tail will vest the whole estate in him. F. 463

And that, whether expressly or by implication.
Lowe v. Windham, 1 Vent. 99. F. 486

And the like doctrine, as in the case of chat-
tels real, applies in the case of chattels personal,
Vashel v. Vashel, 1 Ch. Cases, 127. F. 404

Except as to the legal remedy, for an execu-
tory bequest of chattels personal still rests in
equity only. F. 413

Nevertheless trover will lie at law by the per-
son next entitled against a pawnbroker, for chat-
tels personal pawned by the first taker. *Hoare*
v. Parker, 2 T. R. 376. F. 415

Nor are the chattels liable to the debts of the
first taker. F. 415

The ulterior devisee of chattels personal might
formerly exhibit his bill in Chancery, to com-
pel security from the first taker. F. 407

But the present practice is for an inventory to be signed by the first taker, and to be deposited with the master. F. 407

And see **EXECUTORY DEVISES,—PERSONAL ESTATE.**

CHILDREN.

If an estate be devised to A. and his children; and A. have a child or children living at the time of making the will, the parent and all the children then born, or thereafter born, will take as tenants in common in fee. *Oates v. Jackson*, 2 Stra. 1172. F. 313

But if A. have no child then born, he will take an estate tail. F. 377

Unless the limitation be to the children “*equally*,” which will be incompatible with an estate tail in the parent. *Goodright v. Dunham*, Dougl. Rep. 251. F. 375

CIVIL LAW.

Under the civil law, entails were not permitted beyond the fourth degree. B. 568

CLERGY.

A devise of an advowson to the first son of A. who should be in priest’s orders, is void for remoteness. *Proctor v. the Bishop of Bath and Wells*, 2 H. Black. 358. B. 509

COLLATERAL HEIR.

See **ESTATE TAIL—EXECUTORY DEVISES.**

COMMON LAW.

Even at common law, instances are to be found, in which a subsequent limitation to the heirs of the body has been so qualified and corrected by other additional words, as to be construed words of purchase and not of limitation, as,

F. 149

1st. In the case of a devise,—as to A. for life, and if she should marry after the death of the testator, and have any heirs lawfully begotten, then to the heir of A. after the death of A. and the heirs of such heir. *Cheek or Clerke v. Day, Moor, 593.* And see *Archer's case*, 1 Rep. 66. where the devise was to A. for life, and after to the next heir male of A. and the heirs male of the body of such heir male.

F. 150

2dly. In the case of a conveyance by fine,—as to the use of the conuzee for life, remainder to his first and other sons to the sixth successively in tail male, remainder to the right heir of the conuzee, to be begotten after the sixth son and his heir male. *Walker v. Snow, Palm. 359.*

F. 151

And 3dly. In the case of covenant to stand seized,—as to A. for life, remainder to his first, second, third, and fourth sons successively in tail male, and so severally and respectively to every of the heirs male of the body of A. and the heirs male of the bodies of such heirs male according to their seniorities, and in default of such issue over. *Lisle v. Gray, 2 Lev. 223.*

F. 151

And at common law, a freehold may, by agreement upon the livery, be transferred from one

person to another by matter *ex post facto*. Plowd.

31.

F. 362

Conveyances by feoffment, fine, and recovery, are, so far as they convey the estate to the feoffee, conuzee, or recoveror, conveyances *at common law*.

B. 417

And so in the case of a conveyance by lease and release, the release operates, *at common law*, to enlarge the estate of the lessee.

But any uses declared thereon respectively take effect under the statute.

B. 417

COMMON RECOVERY.

A common recovery, suffered by tenant in tail, will bar all collateral conditions subsequent and limitations. 1 Mod. 111.

F. 428

Such as to A. in tail, and if she marry any but a Searle, then to C. *Page v. Hayward*, 2 Salk. 570.

F. 424

Or to A. in tail, determinable on his non-payment of £100, remainder to B.

F. 425

Or to A. in tail so long as such a tree shall stand.

F. 425

And a will made by him subsequently to the execution of the deed, making the tenant to the præcipe, but previously to the return of the writ of seizin, will be valid. *Selwyn v. Selwyn*, 2 Burr. 1031. And see ESTATE TAIL.

F. 368

But a common recovery by tenant in fee will not bar an executory estate, conditional limitation, or collateral condition. *Pells v. Brown*, Cro. Jac. 590.

F. 429

The power in tenant in tail to suffer a com-

mon recovery, cannot be restrained by condition, limitation, custom, recognizance, statute, or covenant.

B. 257

Nor can the attempt to suffer it be restrained.

B. 257

Nor a conclusion so to do.

B. 257

But where a person is entitled to an estate tail, under an executory devise, and the freehold has in the mean time descended on the heir at law of the testator, (as to A. for six months, and then to B. in tail,) the concurrence of the heir at law in the recovery will be absolutely requisite.

B. 537

COMMON, RIGHT OF.

Right of common, newly created, may (like a newly created rent,) be made to vest, and cease, and revest, *per modum donationis*. 1 Rep. 87. F. 528

CONDITION.

In the consideration of conditions, great care must be taken to ascertain, whether they are precedent or subsequent; for if the contingency on which an estate is limited, can be construed a condition subsequent, the estate will vest subject to be divested on the happening of the contingency, in the room of waiting until the contingency happens; as in the case of a limitation to A. and the heirs of his body, if he attain 18, but if he die before 18, and without issue male, then to the right heirs of B. *Stocker v. Edwards*, 2 Show. 398. There the estate vested subject to be divested on A.'s decease under 18, without issue male.

F. 247

F. 244

And see also *Broomfield v. Crowder*, 1 Bos. & Pul. 313.

B. 247

And see title LEGACIES.

And words sometimes seem to imply a condition precedent, when they in fact only mark the time when the estate shall come into possession; as in *Boraston's case*, 3 Rep. 19. where the estate was devised to A. and B. for eight years, and then to the testator's executors, until his son should accomplish his age of 21 years, and when he should accomplish that age, then to him in fee. It was there held, that the son took a vested estate in interest.

F. 242

And see also *Holcroft's case*, Moor, 487.

Webb v. Herring, Cro. Jac. 416. *King v. Rum-* F. 242

ball, Cro. Jac. 448. *Chadock v. Cowley*, Cro. F. 243

Jac. 695. *Fortescue v. Abbot*, Pollex. 479.

Stocker v. Edwards, 2 Show. 398. *Mansfield* F. 244

v. Dugard, 1 Eq. Ab. 195. *Goodtitle v. Whitby*, F. 245

1 Burr. 228. and *Doe v. Lea*, 3 T. R. 41. F. 246

But in the last mentioned case a distinction was taken between the adverbs of time, when, &c. and then, &c. as denoting the time of vesting only, and the strict word of condition, "if."

See CONSTRUCTION.

F. 246

And see also the case of *Dean*, on the demise of *Radclyffe v. Bagshawe*, 6 T. R. 512. where the limitation was to A. for life, and after her decease to her first son (if living at her decease) in tail male, with remainder over. And there the limitations after the estate to A. were held to be dependent on the precedent condition of A. having a son living at the time of her decease. And see *Richards v. Lady Bergavenny*, 2 Vern. 324.

B. 246

A condition for determining an estate must, however, determine it *in toto*, and not in part only.

F. 252

As, (for instance,) a condition to determine an estate tail, as to a particular person only, is void. *Jermyn v. Arscot*, 1 Rep. 85.

F. 527

And in like manner a condition that the estate shall cease, after the decease of the feoffee, during the minority of his heir, is also void. *Corbet's case*, 1 Rep. 87.

F. 527

Nor must the condition be *fraudulent*, as to prevent escheat, *Moor*, 633.

F. 278

Nor *repugnant* to the estate, as a condition that tenant in tail shall not suffer a common recovery, or levy a fine within the statutes of 4 H. 7. and 32 H. 8.

F. 258

And no one shall take advantage of a condition properly so called, except the grantor or his heirs.

F. 261

And the grantor, bargainor, &c. will be in of the old use or estate. *Holloway v. Pollard*, *Moor*, 761. pl. 1054.

F. 278

In the case, however, of a limitation to uses, (*Benicombe v. Parker*, Leonard, 25. pl. 31.) or of a devise, (*Lady Ann Fry's case*, 1 Vent. 199.) if a condition be annexed to an estate, on the breach or non-performance of which, the estate is limited over to another, this will not be a condition, but a conditional limitation, (which see.)

F. 272

And that, even if the words used be strict words of condition. *Page v. Hayward*, 2 Salk. 570.

F. 424

But to convert a condition into a conditional

limitation, the estate should be expressly made to cease or go over, on the breach or non-performance of the condition. *Gulliver v. Shuchburgh Ashby*, 4 Burr. 1929.

F. 425

Although, in the case of a devise, such will be the construction, if the evident intent of the testator require it.

F. 273

A common recovery, however, by tenant in tail, will utterly destroy any condition subsequent annexed to his estate. *Page v. Hayward*, supra.

F. 424

But a common recovery by tenant in fee will not. *Pells v. Brown*, supra.

F. 429

And in case an estate be limited over (by a conveyance at common law) on the breach or non-performance of a condition, the subsequent estate will be void, by reason that the grantor only, or his heir, can enter for the breach of the condition.

F. 264

And that, whether the preceding estate lie in livery or grant,—whether it be an estate in possession or remainder. *Cogan v. Cogan*, Cro. Eliz. 360.

F. 263

But care must be taken to distinguish a case of condition at common law *abridging* a preceding estate, and a condition, that *if a certain event happen, the land shall remain to another*. In the latter case, the estate in remainder will be construed as taking effect *in interest* only, on the happening of the event, and as waiting the regular expiration of the preceding estate. *Colthirst v. Bejushin*, Plow. 23.

F. 263

It must also be remarked, that if a remainder be limited without any dependence upon a pre-

ceding condition, the remainder will destroy the condition. 4 Bac. Ab. 319. F. 270

And also, that if a condition be at common law, that on the happening of a certain event the particular estate (not being at will, or revocable, or contingent,) shall be enlarged, this will be good. F. 279

Nor will the alienation or death of the grantor avoid the condition. F. 279

But the alienation of the grantee will avoid the condition; although his death will not if the particular estate descend to his representatives. F. 279

And the heir of the grantee may, if the grantee die before performance of the condition, perform the condition, and he shall be in by descent. F. 279

But if a lease be made to two, with a condition to have fee, and they make partition of the term, the condition will be destroyed; for the enlargement must accrue in the same quality in which the estate was first granted. F. 339

And the increase must vest immediately on the performance of the condition. F. 279

It need not, however, be an *immediate* remainder. F. 280

But the particular estate and the increase must be by the same instrument, or by several instruments delivered at the same time. F. 280

And see **CONDITIONAL LIMITATION—CONTINGENT REMAINDER.**

CONDITIONAL LIMITATION.

Wherever in a limitation to uses, (*Benicombe v. Parker*, Leo. 25. pl. 3.) or in the case of a de- F. 274

vise, (*Lady Ann Fry's* case, 1 Vent. 199.) an F. 273
 estate is limited over on the breach or non-per-
 formance of a condition annexed to, and abridg-
 ing or determining a preceding estate, the con-
 dition will operate as a limitation circumscribing
 the continuance of the preceding estate, and the
 estate limited thereon may take effect as a con-
 ditional limitation. F. 272

And these limitations in deeds are also known
 as shifting or secondary uses. F. 276

And were in fact introduced by the statute of
 uses. B. 3

Being unknown to the common law. B. 3

Although they are supposed to have existed
 before the statute in a fiduciary state. B. 384

And also, probably, under the custom of de-
 vising, as it prevailed in London and some other
 places. B. 384

And all limitations of this sort *in wills* may
 now, in general, be classed under the head of
 EXECUTORY DEVISES, (which see.) F. 17

And it seems also, that (in the case of a devise,)
 if there be no limitation over, the intent of the
 testator will be regarded. *Gulliver v. Shuck-*
burgh Ashby, 4 Burr. 1929. F. 425

And it should be further remarked, that it is
 the different manner of framing limitations,
 which distinguishes conditional limitations from
 contingent remainders. B. 12

For if a limitation be to A. for life, if he so
 long continue single; or to A. in tail, so long as
 he and the heirs of his body continue lords of
 the manor of Dale, the estate for life or in tail
 (as the case may be) will in its respective origin

be determinable on the happening of the event provided against; and the estates limited thereon will take effect as **CONTINGENT REMAINDERS**, (which see) on the regular determination of the preceding interest.

B. 11

But if the limitations be to A. for life, with a proviso, that if he marry, his estate for life shall cease; or to A. in tail, provided that on A. or his issue ceasing to be lords of the manor of Dale, the estate tail shall cease, the limitations thereon will vest an estate *in possession* in abridgment of the preceding estate, and will be conditional limitations.

B. 12

A conditional limitation may therefore be distinguished from a contingent remainder, as being made to take effect *in possession*, upon an event which may happen before the regular determination of the preceding estate from the nature of its original limitation, and so to rescind it.

F. 14

And it may, on the other hand, be distinguished from a condition, (properly so called) as giving the persons claiming the estate an immediate right (whether stranger or heir) without entry.

F. 272

And if a conditional limitation be not referred to, or made to depend upon a period or event which is uncertain, it is an estate vested in interest.

F. 1

But if it be so referred or so made dependent, it is an estate contingent.

F. 1

Yet while in actual suspense, it does not seem (strictly speaking) to be *an estate* either vested or contingent.

F. 2

But rather *a right* to an estate in possession at a future period. F. 2

Conditional limitations, however, are not liable to be destroyed by the acts of the tenant for life, as contingent remainders are. F. 429

But a common recovery, suffered by tenant in tail, will utterly destroy all conditional limitations annexed to his estate. F. 428

And if the condition, on which an estate is to arise, be *fraudulent*, as to prevent escheat. Moor, 633. pl. 868. ; F. 278

Or if the contingency be *too remote*, as to the use of a corporation not in being, or to the use of the right heir of a person not in esse ; F. 250

Or if the reversion in being, at the time of the limitation of the particular estate, be materially altered by matter *ex post facto*, so as to prevent the *very same use* arising : (as in *Burton's* case, Moor. 742. pl. 1022. where a feoffment was made to the use of A. for life, remainder to B. for life, remainder to the right heirs of A. ; and if the heir at law disturbed B. then the lands should be to the use of B. in fee ; and A. made a lease for years, to commence after the death of B,) F. 278

The conditional limitation will not arise. F. 278

And see *Holloway v. Pollard*, Moor, 761. F. 278

CONDITIONAL FEE.

At common law, before the statute *de donis conditionalibus*, 13 Edw. 1st. and after a general power of alienation was allowed, conditional fees were introduced ; one species whereof was a li-

mitation to a person and the heirs of his body ;
and until he had issue, the estate was inalien-
able. B. 563

If he had no issue, the estate reverted to the
grantor or his heirs ; but if he had issue, he, or B. 563
any other person claiming under the grant, might
dispose of the estate. B. 563

And, according to Bracton, 2 lib. c. 6. fol.
18, b. the limitation, on failure of issue of the
first taker, might be limited to other persons and
the heirs of their bodies. (*Sed vide contra*, Plowd.
239.) B. 563

To prevent the alienation, the statute *de donis
conditionalibus* was passed, which introduced
estates tail, (which see.) B. 563

CONSTRUCTION.

In some cases, the adverbs of time, "then,"
&c. "when," &c. are construed as denoting
merely the time, when the estate shall vest *in
possession*, and not as creating a contingency.
Boraston's case, 3 Rep. 19. *Holcroft's case*,
Moor, 487. and *Doe v. Lea*, 2 Term Rep. 41. F. 242

And sometimes these adverbs are construed as
denoting the time, when an estate shall vest in
interest, and not as abridging the preceding
estate. *Colthirst v. Bejuishin*, Plow. 23. F. 263

And in some instances, the same words in dif-
ferent limitations in the same will have, in a
court of *equity*, received different constructions.
Papillon v. Voice, 2 Peere Wms. 471. But not F. 145
so in a court of *law*. *Goodright v. Dunham*,
Dougl. Rep. 251. F. 376

And it should be remarked, that whenever the construction upon the apparent intent of the testator is not contrary to the construction upon certain established legal maxims respecting the import of the terms made use of by him, so far the apparent intention should guide the construction, but no further; and if the terms of art made use of by him do not fall within the allowed extent of any established legal maxim respecting their import and operation, there the intent alone may be the sole guide.

B. 172

CONTINGENCY WITH A DOUBLE ASPECT.

Although a fee cannot (in conveyances at common law) be mounted upon a fee, yet two or more contingent fees may be limited, as substitutes or alternatives one for the other of them, yet so that one only shall take effect, and that every subsequent limitation be substituted in the room of the former, if that should fail: as to A. for life, and if he have issue male, then to such issue male and his heirs for ever; but if A. should die without issue male, then to B. and his heirs. *Loddingon v. Kime*, 1 Salk. 224. F. 373

F. 225

And as to M. for life, and after her decease to her children and their heirs (if she should have any); and in default thereof to B. and his heirs. *Ives v. Legge*, 3 T. R. 488. and see also *Doe v. Holmes*, 3 Wils. 237. F. 377

F. 374

And so in the case of *Goodright v. Dunham*, Doug. supra, where estates were devised to

A. for life, and after his death to all his children equally and their heirs; and if A. should die without issue, then to B. and C. and their heirs. F. 375

And so also in the case of *Doe v. Perrin*, 3 T. R. 484. where lands were devised to A. for life, remainder to all the children of A. by C. and their heirs for ever, and in default of such issue to C. for life. F. 376

And it should be remarked, that in none of the foregoing cases, could the words "in default, &c." introducing the remainders after the first limitation in fee, be construed as abridging the effect of that limitation, and converting it into an estate tail. See *Issue*. F. 376

CONTINGENCY.

In some instances a contingency may seem to be implied by words, which, in fact, mean no more than would have been implied without them, and only mark the time when the estate shall vest in possession. *Boraston's case*, 3 Rep. 19. F. 242

However, in all such cases, the rents and profits of the lands, or the lands themselves, have been disposed of, until the time when the devisee was to take possession. B. 241

And if such be not the case, it seems the estate will be contingent. *Fearne's Posthuma*, 191. B. 241

And, in other cases, a contingency may be so worded, as not to amount to a condition precedent, but merely to create a condition subsequent. *Stocker v. Edwards*, 2 Show. 398. And see *CONDITION*. F. 247

And in the instance of a *long* term of years being limited to A. if he shall so long live, with remainder to B. *after the decease of A.*, the possibility of the term expiring in the life-time of A. will not be such a contingency as will prevent the remainder vesting.

F. 21

Sed secus, if the term be so short, as in *common possibility* to admit the happening of the contingency.

B. 23

And in the case of a devise to the wife of a testator for life, if she shall so long continue his widow, and in case she marry, to A. in fee; the contingency of her death, without a second marriage, will not be construed as preventing the vesting of the remainder.

B. 7

And see CONTINGENT REMAINDERS—LEGACIES.

CONTINGENT INTEREST.

In general, contingent interests pass to real and personal representatives, in like manner as vested interests.

F. 364

Unless the existence of the first taker at some particular time, make part of the contingency itself, as in the case of *Moorhouse v. Wainhouse*, 1 Black. Rep. 683. See CONTINGENT REMAINDERS.

F. 365

CONTINGENT REMAINDERS.

A contingent remainder may be defined to be, a remainder so limited as to depend on an event which may never happen, or which may

not happen until after the determination of the preceding estate. F. 3

And if there be a limitation to heirs general or heirs of the body, and there be no preceding estate of freehold limited to the ancestor, and the ancestor be not the person limiting the estate, F. 29 or if the ancestor be the person limiting the estate, and he limit to his own use a preceding term of years, or expressly grant away the use during his own life, and the remainder be to the use of the heirs of his body, the remainder will be contingent. See RESULTING USE and F. 41 F. 42 F. 43
RULE IN SHELLEY'S CASE.

But the uncertainty merely of a remainder ever taking effect, will not render it contingent. F. 216

For if there be a present capacity of taking (supposing the particular estate to fail) the remainder will be vested, and not contingent, as in the case of a lease to A. for life, remainder to B. for life. F. 216

And, in fact, all contingent remainders seem to be so far reducible under one head, as to depend for their vesting on the happening of an event, which by possibility may not happen during the continuance of the preceding estate, or at the instant of its determination. B. 10

Contingent remainders may be divided into four sorts.

1st. Where the remainder depends on a contingent determination of the preceding estate itself. F. 5

2ndly. Where the contingency on which the remainder is to take effect, is independent of the determination of the preceding estate. F. 7

3dly. Where the condition upon which the

remainder is limited, is certain in event, but the particular estate may be determined before the happening of the event; and, F. 3

4thly. Where the person to whom the remainder is limited, is not yet ascertained, or not yet in being. F. 9

And so in the case of *Vick v. Edwards*, 3 Peere Wms. 372. where the devise was to two trustees and the survivor of them, and the heirs of such survivor, in trust to sell, the limitation to the survivor was held to be contingent. F. 356

Although in such last-mentioned case it may be doubted, whether there was a contingency or not; for if the devise had been to the trustees indefinitely in trust to sell, the devise would have carried the fee. F. 357

And in this case, the limitation expressed only what the law would have implied. F. 357

And in the case of a beneficial devise to three persons as joint tenants, and the survivors and survivor of them, and the heirs and assigns of such survivor, the Court of King's Bench held the devisees took an estate in joint tenancy. *Goodtitle v. Layman*, R. B. Trin. term, 12 Geo. 3. F. 358

But, however, in the case of *Harrison*, an infant, 3 Ans. 836. the court held a devise of an estate in mortgage, to three trustees and the survivors and survivor of them, and the heirs and assigns of such survivor, as creating a contingency. B. 358

But the trust was not to sell, nor could by implication carry the fee. B. 358

The conveyance of the trustees, however, would certainly carry the *equitable* fee. B. 358

Contingent remainders have generally been divided into three sorts only, the first class having been confounded with conditional limitations. F. 9

From which, however, they may be distinguished, as being limited to commence on the natural determination of the preceding estate, and not in abridgment of it, as in the case of conditional limitations (which see). F. 14

There are *exceptions* to the *third* class of contingent remainders, in instances where a long term of years is limited, determinable on the decease of a person in esse, with a remainder to a person in esse, after the decease of the *cestui que vie*. This remainder is ranked as a VESTED REMAINDER, (which see,) and see CONTINGENCY. F. 20

And there are *exceptions* also to the *fourth* class of contingent remainders, by reason of the rule now known by the name of the RULE IN SHELLEY'S CASE (which see). F. 28

And there are *further exceptions* to the *fourth* class in certain cases of devise, where the word "heirs," &c. has been considered as a *descriptio personæ viventis*. (See DEVISE.) F. 209

And also in the case of a devise by a testator to his wife for life, if she shall so long continue his widow, and in case she marry, to A. in fee; the remainder to A. has been held vested; to take effect on the death or second marriage of the widow. *Luxford v. Cheek*, 3 Lev. 125. *Raymond*, 427. and *Lady Ann Fry's case*, 1 Vent. 203. B. 7

But no estate can be *vested* after a contingent estate *in fee*; for all subsequent limitations must in such case also be contingent. *Lodding v. Kime*, 1 Salk. 224. And see CONTINGENCY WITH DOUBLE ASPECT.

F. 225

Except in certain instances, where a contingent determinable fee is limited for special purposes only; in which case it seems a subsequent limitation to one *in esse* may be vested. *Tracey v. Lethueller*, 3 Atk. 774.

F. 225

But if the preceding particular estate be for life or in tail, with contingent remainders (*not in fee*) limited thereon, a subsequent remainder to a person *in esse* will vest; and the intermediate contingent estates will, when they arise, interpose themselves. *Chudleigh's case*, 1 Rep. 137.

F. 223

And that, whether the contingent estate is limited to a person *in esse* or not, if the contingency do not extend to the subsequent limitations. *Napper v. Sanders*, Hutt. 119.

F. 224

And so; if the subsequent remainders be to the heirs, or heirs of the body of the first tenant for life, the estates will coalesce *sub modo*, and separate when the contingency happens. *Lewis Bowles's case*, 11 Rep. 80. And see LIMITATION—SUB MODO—RULE IN SHELLEY'S CASE.

F. 223

And should a subsequent contingent remainder become vested in interest before a preceding contingent remainder, yet the first estates will interpose and vest when they arise. *Uvedale v. Uvedale*, 2 Roll. Ab. 111.

F. 224

But it is necessary to distinguish between those cases, in which the condition annexed to the preceding estate is considered a condition

precedent to give effect to the ulterior limitations, and those in which it is not; as,

F. 233

1st. It is a rule, that where there is a limitation after a preceding estate, which estate is made to depend on a contingency, that never takes effect, and it is the apparent intention of the testator, that the contingency shall not extend beyond the estate to which it is first annexed, the subsequent limitations will not be affected thereby. See *Napper v. Sanders*, supra. *Tracey v. Lethuellier*, supra. *Bradford v. Foley*, Doug. Rep. 63. and *Horton v. Whitaker*, 1 T. R. 346.

F. 234

F. 235

But the intention of the testator must in such case be apparent, or the contingency will affect the whole ulterior train of limitations, as in *Davis v. Norton*, 2 Peere Wms. 390. *Doe v. Shipphard*, Dougl. Rep. 74.

F. 236

And should the first limitation be void for remoteness, all the subsequent limitations will, whatever be the intent of the testator, be void also. *Proctor v. the Bishop of Bath & Wells*, 2 Henry Black. 358.

B. 509

2ndly. It is also a rule, that where remainders are limited on a conditional determination of the preceding estate, which preceding estate never takes place, yet the remainders may nevertheless take effect, as in the instance of a devise to trustees for 11 years, remainder to the first and other (unborn) sons of B. in tail male, provided they took the testator's surname; and if they refused, or died without issue, to the first and other sons of C. who had a son then born. *Scatterwood v. Edge*, 1 Salk. 229: here, although the estate to

the sons of B. was not held valid, the limitation to the son of C. took effect.

F. 237

And, thirdly, it seems, that where remainders are limited on a conditional determination of the preceding estates, and the preceding estate does take effect, and the event on which the subsequent estate is limited does not arise, the remainder will not take effect: as, in the case of a bequest of furniture to A. for life, on condition that she did not marry again, and if she did, then to C. and his issue. A. did not marry again; and, after her decease it was held, that C. was not entitled. *Sheffield v. Lord Orrery*, 3 Atk. 282.

F. 238

But the apparent intent may render the determination otherwise.

F. 239

And so; in the case of *Luxford v. Cheek*, 3 Lev. 125. where lands were devised to the wife for life, and if she married again, to the son in tail, and the wife did not marry again, the estate in the son was nevertheless held good on the intention.

F. 239

And in some instances a contingency may seem to be implied, when in fact the time of vesting in possession only is denoted. See *Boraston's case*, 3 Rep. 19. And in other instances, the contingency has been considered a condition subsequent only. *Stocker v. Edwards*, 2 Show. 398.

F. 242

F. 247

And see CONDITION—CONTINGENCY.

The event, however, on which a contingent remainder may be limited, must not be *against law*, which is *potentia remotissima*; such as a limitation to a bastard not in esse.

F. 249

Nor *too remote*, as to a corporation not in esse, or to the heirs of I. S. who is not then in existence, though he be afterwards born, or to a particular person by name, then unborn; which is a possibility upon a possibility. See POSSIBILITY. F. 250
F. 251

Nor *repugnant* or *contrariant* to the estate to which it is annexed, as a proviso that an estate tail shall cease as if tenant in tail were dead. *Corbet's case*, 1 Rep. 83. F. 253

5. Nor *inconsistent* with such estate, as a proviso that tenant in tail shall not suffer a common recovery. *Mary Portington's case*, 10 Rep. 36. F. 258

6. Nor must the remainder abridge or defeat the *particular estate*. F. 261

Such as in the case of a lease to two for their lives with remainder over to a stranger on the decease of the first of them, the remainder is void. Plowd. 24. F. 262

7. Nor must the remainder be limited on a condition, which is to defeat a *preceding remainder*. *Cogan v. Cogan*, Cro. Eliz. 360. F. 263

For there is no difference in that respect, whether the preceding estate be in grant or livery, in possession or remainder. F. 364

In some cases, however, the contingent estate may in fact commence before the determination of the preceding estate; yet if it do not defeat, exclude, or abridge the particular estate, but (for instance) enlarge it, there is no objection to its taking effect as a remainder, as in the case of *Goodtitle v. Billington*, Doug. 725.; and as in the case of an estate to two for their lives, and if the survivor pay 20l. the estate shall be to him in fee. F. 266
F. 265

But it must be observed, that every legal contingent remainder, which amounts to an estate of freehold, must be supported by a preceding vested estate of freehold.

F. 281

And which preceding vested estate of freehold must be created by the instrument creating the contingent remainder. *Moor v. Parker*, 1 Ld. Raymond, 37. *Snow v. Cutler*, 1 Lev. 135. *Weal v. Lower*, Pollex. 66. and *Fonnereau v. Fonnereau*, Dougl. Rep. 470.

F. 302

And the rule applies as well to limitations under the statute of uses, as to limitations at common law.

F. 284

But if the legal estate be in trustees, there will be no occasion in a limitation of contingent trust estates, to limit a preceding estate of freehold; as the legal estate in the trustees will be adequate for the support of the contingent remainders. *Chapman v. Blissett*, Cases temp. Talb. 145. and *Hopkins v. Hopkins*, Cases temp. Talb. 44.

F. 304

It has not, however, been decided, whether if the legal estate be outstanding under some previous deed or will, this will be sufficient to support contingent remainders created by a subsequent deed or not.

B. 305

Although the general opinion is, that it will.

B. 305

Unless the instrument vesting the legal estate in the trustees be of very ancient date.

B. 305

Limitations of uses before the statute did not require the support of a preceding estate of freehold, they being in the nature of trusts.

F. 284

Nor do contingent limitations for years now require such support.

F. 285

Although in the case of *Corbet v. Stone*, Raymond, 140. the court seemed to doubt, whether a contingent remainder for years could be limited at all.

F. 285

A right of entry, however, in respect to a preceding estate of freehold, will support subsequent contingent remainders.

F. 286

But a right of action will not.

F. 287

And, therefore, if tenant for life be disseised, and the contingent remainders do not vest before a descent under the statute of Henry 8. c. 33. be cast, they will be destroyed. See DESCENT.

F. 287

The right of entry, it should, however, be noticed, must be a present right, and not a future one; for if, as in the case of a feoffment to the use of baron and feme and the heirs of the survivor, the baron make a second feoffment, the future right of entry in the wife will not support the contingent remainders. *Bigot v. Smith*, Cro. Car. 102.

F. 289

But where the baron was attainted, (as in the case of *Corbet v. Tichborne*, 2 Salk. 576.) and his wife had the next estate of freehold, the contingent remainders were not destroyed, as no estate was divested, the crown only taking what the husband had. See ATTAINDER.

F. 283

And it is a general rule that every remainder must vest either during the continuance of the particular estate, or *eo instanti* that it determines; for if a lease be made to A. for life and after his decease, and one day after to B. this is void. Howd. 25.

F. 307

But the remainder need not vest until the very instant the particular estate determines. F. 310

And, therefore, a contingent remainder which is limited upon an estate of several tenants in common, or of coparceners, may fail as to one part, and take effect as to another. *Lane v. Pannell*, 1 Roll. Rep. 238. F. 310

And so a contingent remainder may take effect in some, and not in all the persons to whom it is limited. F. 312

But it is a rule, that where a contingent estate is limited to several at the same time, it shall vest in the first person becoming capable, and divest as the others become capable to take. *Matthews v. Temple*, 1 Ld. Raym. 311. F. 313

And this whether they take as joint tenants. *Cates v. Jackson*, 2 Stra. 1172. F. 313

Or as tenants in common. *Doe v. Perryn*, 3 T. R. 484. F. 313

And although they take at several times they may hold jointly. Co. Litt. 188 a. F. 315

But if no particular estate or right of entry exist when the contingency happens, the remainder is gone for ever. F. 315

Feoffment or *forfeiture* by tenant for life will destroy contingent remainders immediately dependent on his estate. 1 Rep. 137 b. and see *Archer's case*, 1 Rep. 66. F. 317

And so will a *surrender* by tenant for life. *Thompson v. Leach*, 2 Vent. 198.

Sed secus, as to a surrender by tenant for life of copyholds, see COPYHOLDS.

Nor will a bargain and sale, or lease and re-

lease by tenant for life, destroy contingent remainders limited on his estate. F. 322

Unless made to the next vested remainder-man or reversioner. B. 322

Or unless the next vested remainder-man or reversioner concur therein with the tenant for life; for in such latter cases, the union of the estates will destroy the intermediate contingent remainders. And see TRUSTEES TO PRESERVE. B. 322

And it is to be observed, that although forfeiture by tenant for life will in general destroy contingent remainders limited on his estate, yet if the act do not discontinue or divest any subsequent estate, or merge or destroy his own estate, and if the next vested remainder-man do not enter for the forfeiture, the contingent remainders depending on the estate for life will not be thereby destroyed. F. 323

And such is the acceptance of a fine *come ceo*, &c. by tenant for life from a stranger. *Lloyd v. Brooking*, 1 Vent. 188. F. 323

But a contingent remainder may be destroyed by an act which does not divest or discontinue any remainder, or subsequent estate, but which *extinguishes* the particular estate, as in the case of a surrender by tenant for life, *supra*. F. 323

And whether a contingent remainder is created by a conveyance at common law, or limited by way of uses, the same rule will hold in regard to its capacity of being destroyed by the acts of the tenant for life. F. 324

It has been asserted, that any alteration in the nature of the preceding estate will destroy contingent remainders limited thereon. F. 338

But it seems, that the alteration must be such as will amount to an alteration in the *quantity*, not in the *quality* of the estate. F. 338

For the severance of the jointure between two joint tenants for life, will not destroy contingent remainders. *Lane v. Pannell*, *supra*. F. 339

Nor will a release by one joint tenant to another. *Harrison v. Belsey*, Raym. 413. F. 339

And it also seems, that notwithstanding the assertion of Lord C. J. Hale in *Purefoy v. Rogers*, 2 Saund. 386. viz. that whenever there is a *merger* of the particular estate in the reversion, the contingent remainder is gone. F. 340

Yet that doctrine must be admitted with the following qualifications. F. 340

1st. Whenever the union takes place by the act of the parties, (unless in the case of the particular estate, and the reversion being created by the same deed,) the contingent remainders immediately depending on the particular estate will be destroyed. F. 340

2dly. That when the fee descends *immediately* from the ancestor, by whose will the particular estate and remainders were created, the contingent remainders are not destroyed. *Plunket v. Holmes*, 1 Lev. 11. *Boothby v. Vernon*, 9 Mod. 147. F. 343

3dly. That whenever the descent of the fee is not immediately from the ancestor, whose will created the particular estate and contingent remainder; F. 343

Or where the particular estate and contingent remainder are not created by the will of any ancestor from whom the inheritance de-

scends, the contingent remainders will be destroyed. *Kent v. Harpoood*, T. Jones, 76. and *Hooker v. Hooker*, Rep. temp. Hardwick, 13. F. 343

And 4thly. That whenever the particular estate and inheritance are by the same deeds executed in one person, with intermediate contingent remainders, the contingent remainders will not be destroyed. F. 346

It must be further remarked: that if tenant for life, make a feoffment with condition, which is a destruction of the contingent remainders, and enter for the condition broken, the contingent remainders will not be revived. F. 349

Unless the entry be made before the contingency happens. F. 349

Nor will they even in that case be revived, if the reversioner enter for the forfeiture before the contingency happen. F. 349

Whenever a remainder of inheritance is limited in contingency by way of use, the inheritance, if not otherwise disposed of, remains in the grantor and his heirs until the contingency happens. *Sir Edward Clere's case*, 6 Co. Rep. F. 351
18. *Leonard Lovie's case*, 10 Rep. 78. *Beck's case*, Litt. Rep. 159. and *Davies v. Speed*, Carthew, 262. F. 352
F. 353

And so, if the inheritance is devised in contingency, the inheritance will descend to the heirs of the testator in the mean time. *Plunkett v. Holmes*, Raym. 28. *Purefoy v. Rogers*, supra, and *Carter v. Barnardiston*, 1 Peere Wms. 517. F. 353

Although Lord Talbot, in the before-men-

tioned case of *Vick v. Edwards*, seemed inclined to resort to the doctrine of ABEYANCE (which see.)

F. 356

And in conveyances at common law, great doubts have been entertained, whether the inheritance during the contingency was in abeyance or not.

F. 360

Yet, even in such case it was admitted, that on the *decease* of the tenant for life, before the contingency happened, the grantor or his heirs might enter, 2 Roll. Abr. 418. pl.1, 2. But some denied the right to re-enter in the case of *forfeiture* by tenant for life. *Beck's case*, supra.

F. 360

But in Brooke's Readings on Stat. Lim. 84, it is said, that if a lease for life be made by A. on condition, that if the tenant have issue in his life, the same shall remain to him in fee, and the tenant commits waste before issue born; A. may enter, *as the fee remained in him until the birth of issue*.

F. 362

A contingent interest is transmissible to the heirs of the person to whom it is limited, if he die before the contingency happen, *Weale v. Lower*, Pollexf. 57. unless his existence at some particular time make part of the contingency. See CONTINGENCY.

F. 364

And may, before it vests, be passed by fine, by way of estoppel, so as to bind the interest which shall afterwards accrue by the contingency. *Weale v. Lower*, supra, and *Vick v. Edwards*, supra.

F. 365

And if the fine be levied of *part* of the interest only, as for a term of 500 years, by a contingent remainder man in fee, (*Weale v. Lower*, su-

pra,) the interest thereby created will take effect on the happening of the contingency. F. 365

But if the fine be of the *whole* interest, it will operate to the benefit of the possession as the fine of a disseisee to a stranger. F. 366

And see Preston on Conveyancing, p. 301, and the cases there mentioned by him, in which he recommends a *fine sur concessit* for years to prevent forfeiture. B. 358

But contingent remainders cannot be passed by a conveyance *at law*, otherwise than by estoppel by fine, or by common recovery, wherein the person entitled shall come in as vouchee. F. 366

They are, however, assignable in *equity*. F. 366

But they do not appear formerly to have been held *deviseable*. *Bishop v. Fountain*, 3 Lev. 427. and *Ives v. Legge*, 3 T. R. 488. F. 366

And it seems that this opinion arose from construing the word "having" in the statute of wills as meaning "seized of." F. 368

But it has been now determined that the word "having," in the statute, means "having an interest in." 3 T. R. 88. F. 370

And it may now be considered, that a contingent estate which would be descendible to heirs is deviseable. *Selwyn v. Selwyn*, 2 Bur. 1131. F. 371
Moore v. Hawkins, Black. Rep. C. P. 33. F. 368
Roe v. Jones et al. Bl. Rep. C. P. 30, and 3 T. R. 88. F. 370
 F. 371

But the decisions do not appear to reach those cases, where neither the contingent interest itself is transmissible, nor the object of the interest ascertainable, before the contingency happens. F. 371

And it should be observed, that whenever in a will, the first limitation be not in fee, with a contingent limitation thereon, the second limitation will, *if possible*, be construed a contingent remainder, and not an EXECUTORY DEVISE, (which see.) *Spalding v. Spalding*, Cro. Car. 185.

F. 420

And also that if a preceding estate has once vested, no subsequent accident will make a contingent remainder enure as an executory devise.

F. 526

And lastly, contingent remainders will be protected by a court of Chancery against unreasonable waste. *Dayrell v. Champness*, 1 Eq. Ab. 400.

F. 562

And the court will, in case of collusion between the tenant for life and the next person having a vested estate of inheritance, even decree restitution. *Garth v. Hind*, 1 Vesey, 524. And see COPYHOLDS.

F. 567

CONTRACT, LAW OF.

The law of contracts or moral obligation, is that on which the law *of trust* is founded; and to which, the principles that gave rise to the law *of tenure* evidently do not apply.

B. 537

COPARCENERS.

May make partition of an advowson to present by turns. 17 Ann. cap. 18.

F. 527

COPYHOLDS.

The rule of the subsequent limitation to the heirs, &c. vesting in the ancestor, when he takes a preceding estate of freehold (See **RULE IN SHELLEY'S CASE**) applies as well in limitations of copyhold as of freehold lands. F. 60

And also, (as in the case of freeholds) if an estate for life be limited to baron or feme only, with a subsequent limitation to the heirs of both their bodies, the subsequent limitation will not vest in the ancestor, but be a contingent remainder in the heir. *Lane v. Pannel*, supra, and *Frogmorton v. Wharrey*, 3 Wil. 125. See **LIMITATION**. F. 65

A distinction, however, was taken by Lord Chief Justice Coke, between a limitation on a surrender by a copyholder in fee to his own heirs general, where he takes a preceding estate of freehold to himself, and where he does not, which distinction certainly does not prevail in freeholds. F. 66

In the first case, he was of opinion, that the heir would take by descent; in the latter case, that he would not, on the ground that *all* the uses created by the surrender are new uses. F. 67

But, that the limitation to the right heirs of the surrenderor is part of the old estate, and not new use, see *Roe v. Griffiths*, 2 Burr. 1352. and *Thrustout v. Cunningham*, Blackst. Rep. 1046. F. 67

In which latter case it was determined, that if a copyholder make a surrender to the use of his will, and afterwards surrender the lands to

the use of himself, and his intended wife, and the heirs of their two bodies, with remainder to his own right heirs, and afterwards make his will, the devise will be good on the former surrender.

F. 68

But the distinction taken by Coke seems, however, to have been in some measure recognized by Mr. Justice Ashhurst in the case of *Roe v. Quartley*, 1 T. R. 634.; *sed contra* see Watkins on Copyholds.

B. 71

It has been doubted whether conditional limitations or shifting uses are good in copyhold estates.

F. 276

Inasmuch as the uses upon a surrender are in general governed by the same rules as conveyances at common law.

F. 277

And the case of *Simpson v. Sothern*, as reported in Croke. Jac. 376. is against such limitations.

F. 277

Yet, the same case (as reported by Rolle) is cited in the *Lex Custumaria*, in favour of such limitations. 1 Roll. Rep. 109.

F. 277

Lord Chief Baron Gilbert, however, in his *Tenures* inclines to the doctrine in Croke. *Gilb. Ten.* 244.

F. 277

But, it seems that modern decisions have admitted conditional limitations in copyhold estates. *Stocker v. Edwards*, supra, *Paulter v. Cornhill*, Cro. Eliz. 361. and *Bently v. Delamore*, 1 Freeman, 267.

F. 277

And in mortgages of copyholds a surrender in futuro is good.

F. 277

A surrender by tenant for life of a copyhold, will not destroy contingent remainders limited thereon, the legal freehold being in the

lord. *Pawsey v. Lowdall*, 2 Roll. Ab. 793.
pl. 6. F. 319

Nor will a forfeiture by tenant for life of
copyholds destroy contingent remainders. F. 320

But if the contingent remainders do not vest
at the time when the preceding particular estate
would *regularly* determine, they will not after-
wards take effect. F. 320

As copyholds are not within the statute *de
donis*, a limitation to the heirs of the body will
give a **CONDITIONAL FEE**, (which see.) *Pawsey
v. Lowdall*, *supra*. F. 319

But copyholds may be entailed by custom, F. 319
and the entail may by custom be barred by sur-
render. F. 95

And it should be observed, that as the sta-
tutes of the 11 H. 7. c. 20. and 32 H. 8. c. 28.
do not extend to copyholds, it may be question-
able, how far the general doctrine of equity, in
decreeing limitations in strict settlement in cases
of **ARTICLES BEFORE MARRIAGE**, (which see,)
where the articles import an estate tail in the
parent, extends to copyholds. B. 114

CORPORATION.

A remainder to a corporation not in being at
the time of the limitation is void, being *poten-
tia remotissima*. F. 250

But if during the vacancy of a mayoralty, a
lease be granted to A. for life, with remainder
to the mayor and commonalty; and a mayor is
elected during the life of A. the remainder will
be good. F. 250

COVENANT TO STAND SEIZED.

A covenant to stand seized is a real covenant, and at common law a mere declaration of trust, and owes its effect, as a mode of conveyance, entirely to the statute of uses; and requires the consideration of *natural love or marriage* to support it.

B. 417

If A. by feoffment convey to B. in fee, and B. by the same deed covenant on payment of 40s. by A. to stand seized to the use of A. in fee; the covenant will raise an use on the contingency. *Benicombe v. Parker*, Leon. 25. Pl. 31.

F. 274

But this will not operate as *a covenant to stand seized*.

COURTS.

The courts of law and equity, *in the cases of legal estates and trusts executed*, have agreed in their application of the rule in Shelley's case, (which see.) And it is in the instance of a *trust executory*, (which see) that the Court of Chancery will, in the case of a limitation to the heirs of the body, after a preceding estate of freehold in the ancestor, direct a settlement to first and other sons, &c. And in the case of *Papillon v. Voice*, 2 Peere Wms. 471. where lands were devised to A. for life, with remainder to a trustee during the life of A. to preserve contingent remainder, with remainder to the heirs of the body of A. and monies were directed to be laid out in the purchase of lands, and to be *conveyed and settled by the trus-*

F. 142

F. 145

tees to similar uses; the Court of Chancery in the first instance decreed, that A. took an estate tail, and in the second instance directed the lands to be limited in strict settlement.

F. 145

CREDITORS.

In the case of the settlement of the personality of the wife, in trust for the husband for life, and if he shall fail then in trust for the separate maintenance of the wife and children, the provision for the wife's benefit will be held good against creditors. *Lockyer v. Savage*, 2 Stra. 947.

B. 250

But it seems, that to support such a provision, the property must move from the person, for whose benefit the stipulation is made.

B. 250

And it is possible so to limit an annuity, as virtually to exclude the creditors both at law and in equity; as in the case of a devise of lands for a term of years to trustees, in trust at their discretion to pay an annuity to A. and B. and subject thereto to apply the rents in satisfaction of scheduled debts: *Davison v. Foley*, 2 Brown's C. C. 203.

B. 250

And indeed a life estate or interest may generally, in the case of a will or voluntary gift, be made to cease on the estate becoming liable to be vested in another.

B. 250

CURTESY.

Where money is *by will* directed to be laid out in the purchase of lands, and settled to the use of a woman by such words as, if lands had

been in such manner devised, would have conferred on her an estate tail; as to A. and her children, and if she die without issue, remainder over; her husband will be entitled to an estate by curtesy. *Sweetapple v. Bindon*, 2 Vernon, 536.

F. 112

And that; even if the wife die before the lands are purchased.

F. 112

And yet, if the same words had been used in *articles before marriage*, and the intent had been clear to give A. an estate for life only, the court would have directed a settlement accordingly.

F. 213

And in any case to entitle the husband to curtesy, the estate of inheritance in the wife must have been executed in *possession* in her during her life. *Boothby v. Vernon*, 9 Mod. 147.

F. 341

CY PRES DOCTRINE.

The *cy pres* doctrine is a sacrifice of the *particular intent* of a testator to his *general intent*, where the *particular intent* has appeared to be contrary to law.

B. 204

As where a testator has intended, that the issue of a devisee should take, (which is his *general intent*;) but has also intended that the children of unborn children should take by purchase, (which is his *particular intent* and against law.)

B. 204

In such cases the courts, to give effect to the general intent, have vested the inheritance in the ancestor himself, giving him an estate tail. See *Humberston v. Humberston*, 1 Peere Wms. 332. *Chapman v. Brown*, 3 Burr. 1626. *Ni-*

chol v. Nichol, 2 Sir Wm. Black. 1159. *Hopkins v. Hopkins*, 1 Atk. 58. and *Robinson v. Hardcastle*, 2 T. R. 241.

B. 206

In all which several cases, however, it is to be observed, that although the land did not vest in the issue as purchasers, yet it became liable to exactly the *same course* of devolution, as if it had so vested.

B. 206

But in the case of *Pitt v. Jackson*, 2 Brown's C. C. 51. where under a power to appoint to children, an appointment was made to a child for life, with remainder to *all the grand-children* as tenants in common, although the decreeing of an estate tail in the child would render the devolution essentially different from that intended, yet the court decreed an estate tail in the child.

B. 206

The doctrine of *cy pres*, however, does not extend to the bequest of *personal* estates. *Routledge v. Dorrel*, 4 Ves. Jun. 357.

B. 208

Nor to limitations in *deeds*.

B. 208

And the case of *Pitt v. Jackson* has carried the doctrine to the utmost verge of the law.

B. 208

And the doctrine must in practice be acted upon with extreme caution.

B. 208

DESCENT.

By the common law, the descent of the lands upon the heir of the disseisor took away the right of entry in the disseisee.

B. 287

But since the statute of the 32nd of H. c. 33. the disseisor must have been in peaceable possession for at least five years, to enable the descent to take away the right of entry.

F. 287

Where a contingent remainder (*Weale v. Lower*, Pollex. 57.) or future use (*Wood's case*, 1 Rep. 99 a. there cited,) is limited to a person in esse, and he die before the contingency happens, the heir will take by descent. F. 364

Unless the existence, at some particular time, of the first person claiming, be part of the contingency, and he die before the time arrives. *Moorhouse v. Wain*, 1 Bla. Rep. 683. F. 365

And if in a devise (after a set of preceding limitations) the ultimate reversion be limited to the right heirs of the devisor, (*Purefoy v. Rogers*, 2 Saund. 380.) or if lands be settled to divers uses with remainder to the right heirs of the settlor, the heir will take by descent. F. 51

And so where a preceding estate of freehold is limited to the ancestor with an immediate or mediate remainder to his heirs or heirs of his body, the heir will be in by descent. F. 33

And that, even if the lands be so limited, that the ancestor cannot by possibility obtain a vested estate of inheritance in his life-time; as to A. and B. and the heirs of him who shall die first. F. 34

And it is a rule of law, that a person who claims a fee simple by descent from one, who was the first purchaser of the reversion or remainder expectant on a freehold estate, must make himself heir to such purchaser *at the time when* such remainder or reversion falls into possession. F. 561

And see QUASI DESCENT—RULE IN SHELLEY'S CASE—LIMITATION, and HEIRS.

DESIGNATIO PERSONÆ.

Notwithstanding the rule that *nemo est hæres viventis*, yet in certain cases of devise, a limitation to the heirs special of a person *then living* has been held a sufficient *descriptio personæ* for the remainder to vest. See CONTINGENT REMAINDER—DEVISE—HEIRS.

DEVISE.

It is a general rule in the consideration of a devise, never to reject words, if they can possibly stand; and words may even be removed from one part of a will to another, to answer the testator's intent. *Wright v. Pearson*, Amb. F. 130 358. F. 131

Wherever a remainder of inheritance is devised in contingency, the inheritance not otherwise disposed of, will descend to the testator's heirs, until the contingency happens. *Plunket v. Holmes*, Raym. 28. F. 353

In certain cases, a limitation in a devise to the heirs special of a person then living, has been adjudged a sufficient *descriptio personæ* for the remainder to vest, notwithstanding the rule that *nemo est hæres viventis*; and this is an exception to the fourth class of contingent remainders, (which see.) F. 210

But in all these cases the limitation has been qualified by the words "now living," as in the case of *Burchett v. Durdant*, 3 Vent. 311. F. 210

Or other circumstances have appeared indicating the testator's intention, as in the case of *Long and Beaumont*, 1 Peere Wms. 229. and F. 210
Goodright v. White, 2 Bla. Rep. 1010. F. 212

In a devise, as well as in a limitation by way of use, a remainder may vest in several persons, at different times, as joint tenants. *Cates v. Jackson*, 2 Stra. 1172. F. 313

And so as tenants in common. *Doe v. Perryn*, 3 T. R. 484. F. 313

And it should be observed, that although a devise to trustees *and their heirs*, in trust to pay debts, will carry a fee. Amb. 358. F. 128

Yet an *indefinite* devise to trustees for such purpose will only give a chattel interest. F. 128

An indefinite devise, however, to trustees in trust to *sell* WILL carry the fee. F. 357

And although in the case of *Vick v. Edwards*, 3 Peere Wms. 372. where lands were devised to two trustees and the survivor of them, and the heirs of such survivor, in trust to sell, Lord Talbot held the remainder to be contingent, yet this construction seems very questionable. F. 357

Especially as in a case of a beneficial devise, where the limitation was to A. B. and C. as joint tenants, and the survivors, and survivor of them, and the heirs and assigns of such survivor, it was determined to be a joint tenancy in fee. *Goodtitle v. Layman*, B. R. Trin. term, 22 Geo. 3. F. 358

At all events it might in such case be contended, that the words give the trustees *a power to sell*. F. 358

Yet, nevertheless, in the case of *I. Harrison*,

an infant, Ans. 836. where there was a limitation by devise of an estate in mortgage, to three trustees and the survivors and survivor of them, and the heirs and assigns of such sons; the remainder was held to be contingent.

B. 358

But the trusts were not for sale, and could not, by implication, carry a fee.

B. 358

And it should also be observed, that wherever a future interest, by devise, is limited after an estate of freehold which will support it, the interest is not an EXECUTORY DEVISE (which see), but a CONTINGENT REMAINDER, (which also see); as in the cases *Purefoy v. Rogers*, 2 Saunders, 380. *Walter v. Drew*, Com. Rep. 372. *Wealthy v. Bosville*, Rep. K. B. Temp. Hardwicke, 258. and *Cawardine v. Cawardine*, in Chancery, and *Doe v. Morgan*, 3 T. R. 763.

F. 386

It was held by Ld. C. J. Holt, in *Moor v. Parker*, Ld. Raym. 37. that a devise to an infant *en ventre sa mere*, *per verba de presenti*, was void.

F. 447

And that a devise to a person not in esse should be *per verba in futuro*.

F. 447

But it does not seem that there is any decided case justifying the distinction.

F. 533

And in the present day, a devise to an unborn child *per verba de presenti* is good by way of executory devise, *Gulliver v. Wicket*, 1 Wil. 105. and *Chapman v. Blissett*, Cas. Temp. Talb. 145.

F. 304

And there now seems to be no distinction in a devise between *verba de presenti*, and *verba in futuro*, unless an intention to make an imme-

diate devise *in presenti* can be collected from the will.

F. 537

Care must be taken in the construction of devises, to distinguish between an executory devise, which may be void on account of remoteness, and a conditional devise in trust, to take effect at or before the decease of the testator, on a given event.

F. 458

A devise of all the *rest and residue* of real estate will pass the profits, as well from the testator's death to the time of the first estates vesting, as from the determination of the first estate to the vesting of a subsequent one. *Stephens v. Stephens*, Cas. Temp. Talb. 228.

F. 544

And so in the case of an executory devise of personal estate. *Chapman v. Blissett*, supra, and *Duke of Bridgwater v. Egerton*, 2 Ves. 122.

F. 544

A devise by baron to feme, of household furniture, &c. for her life, will not bar her of her paraphernalia. *Marshall v. Blew*, 2 Atk. 217.

F. 407

And she may use the furniture, &c. in her own or in any other person's house.

F. 407

Or even let the furniture, &c. to hire.

F. 407

Unless devised as heir's looms, with a mesuage.

F. 408

But even in such last-mentioned case the furniture and the house may be let together.

Cadogan v. Kennett, Cowp. 432.

F. 407

And a devise of lands by a testator to his wife, for her life, if she shall so long continue his widow, and in case she marries to A. in fee, will confer a vested remainder on A.

B. 7

DIGNITIES.

Grants of dignities by the sovereign may be *in futuro*.

B. 530

DISCONTINUANCE.

See ALIENATION—BARON AND FEME—ESTATE TAIL.

DISSEISIN.

See DESCENT—ENTRY, RIGHT OF—FEOFFEES TO USES—SCINTILLA JURIS.

DOUGLAS.

Lord Coke, in *Shelley's* case, 1 Rep. 93. has laid it down, that when the ancestor takes an estate of freehold, and in the same gift or conveyance an estate is limited, either mediate or immediate, to his heirs or the heirs of his body, the word "heirs" is a word of *limitation*, and not of purchase.

F. 76

The accuracy of the terms in which the rule is there laid down, is disputed by Mr. Douglas, in his Reports, end of note 3. vol. 486. who states, that if there be an *intermediate* vested remainder in tail, the word "heirs" is a word of *purchase*, and vests *a remainder* in fee or in tail in the tenant for life. But to this it may be replied, that when the word "heirs, &c." operates only to expand an estate in the ancestor, so as to let the heirs described into its extent, and

F. 77

entitle them to take derivatively through or from him as the *root of succession*, or person in whom the estate is considered as commencing, it is properly a word of *limitation*. But when it operates only to give the estate imported by it to the heirs described, *originally*, and as the persons in whom that estate is considered as commencing, and not derivatively from or through the ancestor, it is properly a word of purchase. F. 79

DOWER.

If an estate be limited to A. and B. for their lives, and after their deaths to the heirs of B., or to baron and feme, and the heirs of the body of the husband, or to two men and the heirs of their two bodies, or to the heirs of the body of one of them, the estates in tail, or in fee, will be executed *sub modo*, but will not entitle the wife of the person, so taking the inheritance, to dower. F. 36

But if an estate be limited to A. and B. during the life of C. remainder to the right heirs of A.; and C. die, living A., the wife of A. will be endowed as the freehold, and inheritance will unite in the husband during coverture. F. 31

It seems doubtful, whether a *contingent* remainder of freehold, intervening between an estate of freehold in the husband, and a limitation to his own right heirs or the heirs of his body, will, if it never arise, and the possibility is determined by the death of the husband, preclude the wife from dower. *Cordal's case*,

Cro. Eliz. 316. and *Hooker v. Hooker*, Rep. Temp. Hard. 13.

F. 346

But if the intermediate estate be *a vested remainder*, co-extensive with the life of the husband, dower will certainly not attach. *Duncomb v. Duncomb*, 3 Leo. 437.

F. 347

And hence a mode may be suggested for preventing dower attaching on newly purchased lands, by a limitation to a trustee during the life of the purchaser in trust for him.

F. 347

And if, in case of any such limitation, the husband afterwards convey to a purchaser in fee, without the concurrence of the trustee, the wife of the purchaser will not be dowable during the life of the vendor, as the purchaser will be tenant for the life of the vendor, with remainder to the trustee and his heirs during the life of the vendor in trust for the purchaser, with remainder to the use of the purchaser in fee.

B. 348

DURANTE VIDUITATE.

If an estate be limited to a woman *durante viduitate*, with remainder to the heirs of her body, this will be an estate tail in the woman.

F. 31

EDUCATION.

See INTEREST.

ENTAIL.

Entails were introduced into England by the statute *de Donis Conditionalibus*, 13 Edward 1.

which was passed for securing conditional fees (which see) to the heirs, with the reverter to the lord. For the Scottish law of entail, see *TAILZEE*. And see *FRENCH LAW OF ENTAILS—CIVIL LAW*.

B. 563

ENTRY, RIGHT OF.

A right of entry, in respect of a preceding estate of freehold, will support subsequent contingent remainders. *Thompson v. Leach*, 12 Mod. 174. 1 Rep. 135. and *Wegge v. Villiers*, 2 Roll. Ab. 796. pl. 11.

F. 287

Which a right of action will not.

F. 287

For if the right be tried upon a *possessory action*, and the disseisee recover, he is presumed, in law, to have been, even during the disseisin, the rightful tenant. But by the death of the disseisor, *the law* casts the title upon his heir, and the heir is consequently in by rightful means, and the disseisee must pursue his remedy by action.

B. 287

But since the statute of H. 8. cap. 33. the right of entry will not be taken away unless the disseisor had been in peaceable possession for five years.

B. 287

But there are other acts, besides a descent cast, which will deprive the disseisee of his right of entry.

B. 287

And this right must be a present right, and not a future one. *Bigot v. Smith*, Cro. Car. 102.

F. 289

It must precede the contingency.

F. 289

And be existing when the contingency happens (and see *CONTINGENT REMAINDERS*).

F. 289

If there is no right of entry in any preceding vested estate of freehold when the contingency happens, the contingent uses will be for ever destroyed.

F. 292

The right of entry will support a contingent remainder, *at common law, without an actual entry.* 1 Rep. 135 b.

F. 298

But in the case of limitations under the *statute of uses*, an *actual entry* must be made to revest the estate, (see SCINTILLA JURIS).

F. 295

EQUITY.

The Court of Chancery will never execute the legal estate in an equitable tenant for life, to enable him to defeat subsequent contingent remainders.

F. 321

But will, on the contrary, make every possible stretch to support contingent remainders, and will manage and marshal limitations accordingly. *Green v. Hayman*, 2 Chancery C. 10.

F. 337

And will protect contingent and executory interests from unreasonable waste. *Dayrell v. Champness*, 1 Eq. Ab. 400.

F. 562

And will, in case of collusion, even decree restitution. *Garth v. Hind*, 1 Ves. 524.

F. 565

And in the case of a settlement directed by a will, the court inserted limitations to protect contingent remainders. *Stamford v. Hobart*, 3 Brown's P. C. 31. 8vo. ed.

F. 338

And in cases of articles, settlements, &c. for good and valuable considerations, the court has gone great lengths in transposing clauses or supplying words to support contingent remainders.

F. 338

In equity, all renewed leases are subject to the old trusts. F. 498

And in equity, contingent interests of real and personal estates are assignable. F. 551

And the court will support an assignment of contingent interests against volunteers, in consideration of love and affection and advancement of children. *Wright v. Wright*, 1 Vez. 409. F. 550

But not against creditors. F. 551

And it should be remarked, that there are no degrees of estates known in equity. B. 62

If an equitable tenant in tail mortgage his estate, it is considered as a mere charge.

And on such grounds it is contended, that where an equitable tenant in tail either mortgages his estates or conveys it upon trust, in such manner as to leave the ultimate beneficial ownership in himself, the concurrence of the mortgagee or trustee, in making the tenant to the præcipe, is not essential. B. 62

But on the other hand it is contended, that from *analogy to common law*, the concurrence of the mortgagee or trustee is necessary. B. 62

ESCHEAT.

This word was formerly applied indifferently with *reverter*, to signify the possibility which remained in the grantor and his heirs on a grant in fee or for any lesser estate. B. 381

But in process of time, the right of reverter was applied to the possibility on the grant of any estate, *less* than an absolute fee. F. 382

And the term, *escheat*, to the possibility on the grant of a *fee*.

B. 382

ESTATE.

An estate is absolute or determinable.

It is absolute, when nothing is incorporated into it which may operate to determine it before the period at which, without such an incorporation, it would regularly expire.

B. 11

And it is determinable when there is such an incorporation. Yet the determining quality is deemed *part of* the original measure, and *not as abridging or defeating* the estate.

B. 12

Estates may also be distinguished into estates *vested; vested in possession; vested in interest; and contingent*.

F. 1

An estate is vested, when there is an immediate fixed right of *present or future* enjoyment.

F. 2

An estate is vested in possession, when there is a present fixed right of *present* enjoyment.

F. 2

An estate is vested in interest, when there is "a present fixed right of *future* enjoyment."

F. 2

And an estate is contingent, when there is a right of enjoyment to accrue on an event which is dubious and uncertain.

F. 2

But the word "estate" does not seem to apply to conditional limitations, or executory devises while in actual suspense, such interests being rather, in the nature of a *right* to an estate.

B. 2

But estates cannot be made to vest and cease and revest; as in the instance of a proviso to determine an estate tail as to a particular person only.

F. 527

Except in the cases of newly created commons and newly created rents. (See COMMONS—RENT.)

B. 528

The word *estate* in a devise, if not *locally* applied, will pass a fee. *Wealthy v. Bosville*, Rep. Temp. Hardwicke, 258.

F. 388

ESTATE PUR AUTER VIE.

See LEASES FOR LIVES.

ESTATE TAIL.

Estates tail were introduced by the statute *de donis conditionalibus*, 13 Edward 1.

B. 563

And the same words, which will create a legal estate tail, will create an equitable estate tail.

B. 212

And wherever in the same instrument a preceding estate of freehold is limited to the ancestor with a subsequent limitation to the heirs of his body; or if a preceding estate of freehold can result to him by implication, he will take an estate tail. See RULE IN SHELLEY'S CASE—IMPLICATION—RESULTING USE.

F. 29

F. 41

Nor will the intervention of trustees to preserve contingent remainders prevent the union of the estates. *Colson v. Colson*, 2 Stra. 1125.

F. 161

Nor will the words, "severally, successively, and in remainder," inserted after the limitation

to the heirs; or powers of leasing, or jointuring given to the ancestor, prevent the union.

Jones v. Morgan, 1 Brown. C. C. 206.

F. 134

Nor will other words of limitation, added to the limitation to the heirs of the body, prevent the entail; unless the additional words import a mode of descent inconsistent with an estate of inheritance in the ancestor.

F. 181

Nor will a declaration (in the case of a legal interest or trust executed,) that the devisee shall not have power to dock the entail, prevent an estate tail, if proper words of limitation to that effect are used.

F. 115

Although it would be otherwise in the case of a *trust executory* (which see.)

F. 115

And if lands be devised to A. for the life of B. in trust for B. with remainder to the heirs of the body of A. it seems questionable whether the estates will unite in A.; as, in order to their union, they should be both legal or both equitable. See *RULE IN SHELLEY'S CASE*.

F. 35

It should seem, however, that they would, as the courts of law could not notice the trust.

B. 35

In a devise, the words, "lawful heirs," mean "heirs of the body." *Goodtitle v. Pegden*, 2 T. R. 720.

B. 474

And if lands be devised to A. and his heirs, and if he die without issue, remainder over, he will take an estate tail.

F. 388

And so where lands were severally devised to three brothers, and their several heirs, and if either should depart this life without issue of his body, then to the survivors or survivor of them. This was held an estate tail. *Roe v. Smart*, Easter term, 27 Geo. 3.

B. 474

And if lands be devised to A. and his children; or to A. and after his decease to his children, he will take an estate tail; if he had no children living at the time of making the will. *Wild's case*, 6 Rep. 17.

F. 377

Unless the devise be to the children *equally*.
See CHILDREN.

But in the case of a devise to M. for life, and after her death to the children of her body and their heirs, (*if she should have any*,) the contingency prevented the estate tail in the mother. In *Chancery*, 1743, and vide *Ives v. Legge*, 3 T. R. 488.

F. 377

If chattels be limited by words, which in the freeholds would create an estate tail, the first taker will be entitled to the absolute possession.
See CHATTELS.

The courts will, however, endeavour to confine the limitations over within the rules for EXECUTORY DEVISE, (which see).

F. 471

But in the case of *Crooke v. De Vandes*, 9 Ves. jun. 197. where freeholds and leaseholds were devised to A. and the heirs of his body issuing, and *if he had no such heirs*, then over; it was held that the limitation over was not confined to the time of his death, either as to the freeholds or leaseholds; and, consequently, gave an estate tail in the former, and an absolute estate in the latter.

B. 474

An estate tail may be sometime limited subject to a proviso, which in strictness would seem to abridge the estate; as to A. and the heirs of his body, and if he die in the life-time of C. then to D.: yet it will be held not to be an abridgment

of the estate, but as introducing a contingent remainder dependent on the determination of the estate within that period. *Spalding v. Spalding*, Cro. Car 185. F. 420

And although an executory devise over after a general dying without heirs, is void for remoteness, yet if the person to whom the limitation is made be capable of being collateral heir to the first devisee, the first devisee will take only an estate tail. *Webb v. Herring*, Cro. Jac. 415. F. 467

So if the devise over be to the heirs of the testator himself, if such heirs must be heirs of the first devisee; and that, although the devise over be in fact a nullity, as in the case of a devise to the right heirs of the devisor. *Nottingham v. Jennings*, 1 Peere Wms. 23. F. 467

The power in tenant in tail to bar his estate tail by fine with proclamations, and to bar his estate tail and the remainders over by common recovery, cannot be restrained by proviso, condition, or limitation. B. 257

But the doing of a tortious act which will work a discontinuance, (see ALIENATION) may be restrained. F. 260

And where the estate tail is executory, and the freehold in the mean time descends on the heir at law of the devisor, his concurrence will be requisite in making the tenant to the præcipe. B. 537

An equitable estate tail, with remainders over, may be barred in the like manner as a legal estate tail with remainders over. B. 61

But it should be observed that there is this difference between legal and equitable estates

tail, viz. that if legal tenant in tail mortgage the lands in fee, and then suffer a common recovery without the concurrence of the mortgagee, the recovery will be void. But it is extremely doubtful, whether the recovery by an equitable tenant in tail would not in such case be good. B. 61

An estate tail will not be drowned by the accession of a greater estate, as an estate for life or years will. *Lord Stafford's case*, 8 Rep. 148. F. 297

Nor can it be made to vest and cease and re-vest, unless in the cases of commons and rents (which see) *newly created*. F. 527

Nor can it be made determinable as to a particular person only. F. 527

And if a limitation be made of leaseholds for lives, to a man and the heirs of his body, he will not have an estate tail, but only a descendible freehold, which he may bar without fine or recovery. See LEASES FOR LIVES. F. 497.

And it should be lastly remarked, that no period is too remote for the limitation of an executory estate or interest engrafted on an estate tail. F. 523

ESTOPPEL.

A contingent remainder may be passed by fine, by way of estoppel, so as to bind the interest which shall afterwards accrue by the contingency, and also by a common recovery, if the person actually entitled come in as vouchee. F. 365
F. 366

It should, however, be observed, that although a fine levied for a term of years by the person entitled to a contingent remainder in fee, will

bind the right when it is executed in possession.
Weale v. Lowes, Pollexf. 54.

Yet, if the *whole* estate is passed, the right will be extinguished, and the fine will enure to the benefit of the possession.

F. 366

EXECUTORY DEVISE.

An executory devise is a limitation of a future interest allowed in wills, although contrary to the rules of limitation in conveyances at common law.

F. 386

And is a mode of limitation which was not regularly admitted until about two centuries ago.

B. 429

And if referred to or made to depend on a period or event that is uncertain, is a contingent interest.

F. 1

And if not so referred or so made to depend, is an estate vested.

F. 1

Or rather while in actual suspense is a *right* to an estate in possession at a future period.

B. 2

Every executory devise of freeholds is either the limitation of an estate after the fee has already been disposed of, or else is a freehold to commence in *futuro* without any preceding estate of freehold to support it.

F. 504

Or rather is either a limitation of an estate after the fee has been wholly or partially disposed of, and operating to the absolute determination of such interest, or is a freehold to commence in *futuro* without such previous disposition.

B. 504

And wherever a future estate is limited without a preceding estate; as to the heirs of J. S.

after the decease of J. S. 1 Salk. 226.; and to B. and his heirs, to commence and take effect six months after the testator's decease. *Clarke v. Smith*, 1 Lut. 798. F. 395

Or wherever a contingent estate is limited by devise, unsupported by a preceding estate of freehold; as to trustees for 500 years, remainder to the eldest son of J. who had no son at the testator's decease. *Gore v. Gore*, 2 Peere Wms. 28. Or as to A. for life, and after the decease of A. and one day after, to B. and his heirs. Plow. 25. F. 398

Or wherever an estate is, by devise, limited after a *vested* fee simple; as to A. and his heirs, and if he die without issue, living B. then to B. and his heirs. *Pells v. Brown*, Cro. Jac. 590. Or as a devise of certain lands to A. and his heirs, and of other lands to B. and his heirs, and if either should die unmarried or under 21, and without issue, then the lands devised to the one so dying, to go to the other of them and his heirs. *Hanbury v. Cockerill*, 1 Roll. Ab. 334. F. 395

Or if, even after a contingent estate in fee, a subsequent estate be limited to take effect in defeazance of the first estate, or on an event subsequent to its becoming vested. *Gulliver v. Wickett*, 1 Wils. 105. F. 396

This will operate as an executory devise if within the rules prescribed by law.

And so in the case of a bequest of a term of years or other personal estate, to one for life or otherwise, and after his decease, or on some other contingency, to another, as in *Manning's* case, 8 Rep. 187. and *Lampet's* case, 10 Rep. 46. F. 402 F. 404

This is also an executory devise.

F. 402

And executory devises and limitations of the trusts of terms are governed by the same rules.

F. 470

Every limitation after an executory devise must also be executory; as to trustees for 500 years, remainder to the 1st and other unborn sons of B. in tail, remainder to C. for life. For if a subsequent limitation could vest in possession before a preceding one had vested, the preceding estate would be destroyed.

F. 505

But an executory devise may be so limited as to take effect *in default of the preceding limitation*, if that should fail, *or as a remainder* thereon if it should vest; as to trustees and their heirs until A. should attain 21, and if he should attain that age and have issue, then to him and the heirs of his body, but if he should die before 21 and without issue, then over. *Brownsword v. Edwards*, 2 Ves. 243. And see also *Southby v. Stonehouse*, 2 Ves. 610.

F. 506

The first limitation, however, must not, in such case, be in fee.

F. 507

And any executory devise, whether to a person in esse or not, is good, if confined within the limits prescribed.

F. 495.

And those limits are,

1st. That every executory devise shall vest at least, within the space of a life or lives in being, and 21 years afterwards; or,

F. 432

2ndly. That if limited on a dying without heirs or issue of the first taker, that such dying without heirs or issue shall not be indefinite, but shall be confined to the time of the decease of a

person or persons in being, and 21 years afterwards.

F. 470

For an executory devise to take effect after a general dying without issue, whether of realty or personalty, is void.

F. 444

But considerable doubt seems to prevail, whether the term of 21 years can be absolute, or whether it must not be confined to the minority of infants or of children *en ventre sa mere*.

B. 442

As to the first of the above limits, see *Taylor v. Biddal*, Freem. 243. *Stephens v. Stephens*, Cas. Temp. Talb. 228. *Madox v. Staines*, 2 Peere Wms. 421. and *Sabbarton v. Sabbarton*, Cas. Temp. Talb. 245.

And see also the case of *Heath v. Heath*, 1 Brown C. C. 148. where the limitation was to A. until B. attained 22, and then to B. in fee if he should have a son who should attain 21; and if B. should die without an heir to inherit, then to C.

B. 434

And see also *Long v. Blackall*, 7 T. R. 100. and 3 Ves. jun. 486. where the limitation was to a child *en ventre sa mere*, and to the issue male or descendant of such issue male as should at the time of the decease of such child be his heir at law; and wherein a double allowance for a posthumous child was included.

B. 434

And the rule seems to have been adopted in analogy to the power of tenant in tail to bar his estate at 21.

B. 560

And whatever be the number of lives in being, within which the contingency is confined, the executory devise will be good. See *THELLUS-SON'S CASE*.

F. 432

And, as to the second of these limits, see *Moor v. Parker*, Raym. 37. and *Lanesborough v. Fox*, Cas. Temp. Talb. 262. in which latter case, A. having the reversion in fee on failure of issue male of B. devised "on failure of issue of B." and this was held void. F. 446 F. 447

Although in the case of *Jones v. Morgan*, in Chan. 1772, where A. having the reversion on failure of his own issue male by his then wife, devised to C. on failure of issue male of his sons then born or thereafter to be born, the executory devise was held good. But this was on the ground, that the testator had not a second marriage in contemplation. And the like was the decision in the case of *Lytton v. Lytton*, 4 Brown, C. C. 441. F. 446 B. 454

The rule, however, prevailed in the case of *Wright v. Hammond*, 1 Stra. 427. where the testator declared that, in case his daughter (his only child) should die before her mother, or (and) without heirs, and the mother should marry again and have an heir male, the estate should be to such heir male. And see also the case of *Goodman v. Goodright*, 2 Burr. 873. F. 456

In the case, however, of a devise (after a general failure of issue, male and female of the testator's body,) to trustees for the payment of debts. *French v. Caddells*, 6 Brown. P. C. 58. And in the case of a devise (after a general failure of issue of the testator) to trustees to pay an annuity to his sister until debts and legacies were discharged, *Wellington v. Wellington*, 4 Burr. 2165.; the executory devise was held good. B. 450

And care must be taken to distinguish between

an executory devise to take effect at a period subsequent to the decease of the testator, and a conditional devise to take effect at or before his decease.

F. 458

And it must also be observed, that although the rules for limiting executory devises apply equally to freeholds and personals, yet the courts, in their construction of wills, act upon very different principles in respect to the two different species of property. For, as to the freeholds, the courts incline in favour of the heir at law; and, therefore, are not ready to construe an expression in a devise as tending to restrain the generality of the dying without issue.

F. 476

But as to leaseholds, the courts will lay hold of every expression for such purpose; such as to A. for life, remainder to B. and his heirs, provided that if B. should die without issue, then 100*l.* to be paid to C. within six months after the decease of the survivor of A. and B. *Nichols v. Hooper*, 1 Peere Wms. 198.

F. 471

And as to A. for life and no longer, and after his decease, to such of his issue as A. should appoint, and in case A. should die without issue, then over. *Target v. Gaunt*, 1 Peere Wms. 432.

F. 472

And as a bequest of portions to four children, payable at 21, or marriage, and in case any of them should die before the time of payment, and without issue, then to the survivors or survivor of them. *Nichols v. Skinner*, Chan. Prec. 528.

F. 473

And as a bequest of a residue to A. and B. and if either should die without children, then to

the survivor. *Hughes v. Sayer*, 1 Peere Wms. 534. F. 472

And as a bequest of goods and chattels to A. and if A. should die without issue, then, after his decease, 80l. to be paid to the testator's brother. *Pinbury v. Elkin*, 1 Peere Wms. 563. F. 473

And as to A. for life, remainder to such children as the testator should have at the time of his decease, and if all such children should die without *leaving* any issue, then to B. *Atkinson v. Hutchinson*, 3 Peere Wms. 258. F. 473

And as a bequest of personalty to be vested in B. or the heirs of her body; but in case she should die, *leaving* no heirs of her body, then over. *Forth v. Chapman*, 1 Peere Wms. 663. F. 473

In which last-mentioned case, the same limitation being applied to freeholds as well as leaseholds, was held bad for the former.

And as a bequest of bank stock to A. and B. equally and their issue, and if either should die before the legacy became due, and *leave no issue*, then her share to the survivor. *Lampley v. Blower*, 3 Atk. 396. F. 473

And as in the case of *Keiley v. Fowler*, Jan. 1768, where an executory devise over of personals was made to *executors*, for a particular purpose. F. 483

And see also the case of *Goodtitle v. Pegden*, 2 T. R. 720. where a bequest of chattels to A. and the heirs of his body, and if he should die and *leave* no lawful heir, then over, was held good. B. 474

But if the devise over, in the last-mentioned

case, had been thus, "and if he have no such heirs," the generality of the failure would not have been confined. *Crooke v. De Vandes*, supra. B. 475

And it is clear, that the courts rest especially on the word "*leaving*" in such limitations. F. 480

And so likewise, although the limitation of personals to a person in tail, either expressly or by implication, (as to him and the heirs of his body; or to him for life, and if he die without issue, remainder over) will vest in him the *whole* interest. *Webb v. Webb*, 1 Peere Wms. 132. F. 486 F. 493

Yet the courts will, if there appear any circumstance shewing an intention to restrain the interest to him for life, restrain the same accordingly. F. 492

Such as to A. for life, remainder to the heirs of her body, and *their executors, administrators, and assigns*. *Hodgson v. Bussey*, 2 Atk. 89. F. 494

And such as to A. for life, and after her decease to the heirs of her body; and for want of such heirs, to B. *immediately after the decease of A.* *Paine v. Stratton*, 2 Atk. 647. F. 494

And see *Peacock v. Spooner*, 2 Vern. 43. and *Dafforne v. Goodman*, 2 Vern. 362. F. 493

And a limitation of personals to A. for life, and afterwards to his issue, will not enlarge the estate of A. *Wearman v. Seaman*, Fin. Chanc. Rep. 279. F. 495

Although if the limitation had been indefinitely to A. and afterwards to his issue, it would. F. 495

And even in the case of freeholds, where there was a devise to A. and his heirs, and if he should die and leave no issue *behind him*, then over, the

executory devise was held good. *Porter v. Bradley*, 3 T. R. 143.

B. 476

And it must also be observed, that if the devise over be to a person or persons *in esse for life*, the generality of the dying without issue will be restrained. *Oakes v. Chalfont*, Pollexf. 58. and see *King v. Cotton*, 2 Peere Wms. 608. F. 488

And so in the case of *Shears v. Jeffery*, 7 T. R. 589. where lands were devised to A. and his heirs, but if he should depart this life and leave no issue, then to A. B. and C. and the survivors and survivor of them.

B. 475

But in the case of *Roe v. Smart*, Easter term, 27 Geo. 3. where lands were devised to A. B. and C. and their heirs in severalty; with a condition, that C. should pay D. an annuity until 16, and if either of them should die without issue, then the lands devised to him should go to the survivors or survivor; and if all should die without such issue, then over; it was held that C. took an estate tail.

B. 474

And so in a devise to A. and the heirs of his body, and if he had no such heirs, then over. *Crooke v. De Vandes*, supra.

B. 474 .

And it should be remarked, that if the person to whom the limitation over is made after a general dying without issue, be capable of taking as collateral heir of the first devisee, he will take an estate tail, and the limitation may take effect as a remainder thereon.

F. 466

And that, even if the limitation be to the right heirs of the testator, and therefore void; if such right heirs can be heirs to the first taker.

F. 467

But if in case of such devise over, the next de-

visce be not collateral heir, the courts will not; in consequence of any such limitation, restrain a preceding positive estate in fee to an estate tail. *Attorney-general v. Gill*, 2 Peere Wms. 369. F. 467
and *Tilburgh v. Barbut*, 1 Ves. 89. F. 468

In some cases executory devises may be limited to take effect at a period beyond the limits prescribed by law in estates or interests, which do not, in their own extent or possibility of duration, exceed the limits for the vesting of executory devises, as in the cases of leases for lives or 21 years; and it seems, that *any* limitations of such interests are good. B. 500

But this doctrine seems hardly capable of being applied to cases, where there is a tenant right of renewal. B. 502

And it must be observed, that in executory devises of real estates, the time of vesting, signifies the time of vesting of the *freehold*; and, therefore, if a term be limited for any number of years, with an executory devise of the freehold thereon, this will be good if within the limits prescribed. *Gore v. Gore*, supra, and see *Fairfax v. Heron*, Prec. Chanc. 67. and *Miles v. Snowball*, Cro. Eliz. 142. F. 431
B. 431

If, however, there be a preceding estate of freehold, during the continuance or by the time of the determination whereof the subsequent contingent interest may by possibility vest, the contingent interest will take effect as a CONTINGENT REMAINDER, (which see,) and not as an executory devise. F. 395

And no limitation will be construed an exe-

cutory devise, which can take effect as a remainder. F. 387

But if a preceding estate, followed by contingent remainders, fails in *the life-time of the testator*, the contingent remainders will enure as executory devises. F. 525

If, however, the preceding estate once vests, the contingent remainders will not, *on any subsequent event*, take effect as executory devises. F. 526

Limitations on an executory devise, which is not in fee, are not, while the executory devise is in suspense, properly remainders, but rather rights to become so on the executory devise vesting. B. 503

And whatever number of limitations there may be after the first executory devise of the whole interest, any one of them which is so limited, that it must take effect, if at all, within the time prescribed, may be good in the event of no one of the preceding limitations, which carries the whole fee, vesting. F. 517

But as soon as a preceding executory limitation, which carries the whole fee, takes effect, all the subsequent limitations will become void. *Massenburgh v. Ash*, 1 Vern. 304. *Higgins v. Dowler*, 1 Peere Wms. 98. *Stanley v. Leigh*, 2 Peere Wms. 686. *Studholme v. Hodgson*, 3 Peere Wms. 300. and *Stephens v. Stephens*, Cas. Temp. Talb. 228. F. 517

And where an executory devise is made after a preceding executory or contingent limitation, or is limited to take effect on a condition annexed to any preceding estate, and the preced-

ing estate never takes effect, yet the subsequent limitation may take place. *Scatterwood v. Edge*, F. 510
 1 Salk. 229. *Jones v. Westcomb*, 1 Eq. Ab. 245.
Hopkins v. Hopkins, Cas. Temp. Talb. 44. *Gulliver v. Wickett*, 1 Wils. 105. *Fonnereau v. Fonnereau*, F. 511
 Doug. Rep. 470. and *Avelyn v. Ward*, 1 Ves. 420. F. 513

But not so, if the first limitation fail for remoteness. See *Proctor v. the Bishop of Bath and Wells*, 2 Hen. Bl. 358. and *Cambridge v. Rous*, 8 Ves. Jun. 12. B. 509

In the consideration of limitations by devise, it must, however, be observed, that if a preceding estate be in tail only, and not in fee, a subsequent estate, limited on an event independent of the determination of the preceding estate, will in many cases be deemed not an executory devise, but a contingent remainder, to take effect on the happening of that event. *Spalding v. Spalding*, Cro. Car. 185. See CONTINGENT REMAINDER. F. 420

And it must also be observed, that if an executory devise be limited on the expiration of a preceding vested estate, or on the happening of some future event without any preceding estate, and the expiration of the preceding vested estate, or the happening of the future event, be in the creation of the executory devise too remote, no subsequent event will make the executory devise good. F. 524

But these cases must be distinguished from instances, in which the whole estate is parted with, and all the subsequent limitations will consequently operate as mere alternatives, or in which a partial executory interest is created,

and the contingent estate is to take effect as a substitute or remainder, as the case may be; in either of which cases, if the first limitation be not too remote, the subsequent one cannot be too remote.

F. 523

However, generally speaking, no period is too remote for an executory devise limited after an *estate tail*.

B. 523

For a common recovery by the tenant in tail will bar the subsequent limitations.

F. 424

But, except a common recovery by tenant in tail, no act of any preceding tenant of realty will bar an executory devise. *Pells v. Brown*, Cro. Jac. 590.

F. 418

Nor will any act of the first taker of a chattel prejudice the ulterior devisee. *Lee v. Lee*, Moor, 268.

F. 422

Nor the subsequent union of the freehold and inheritance, (in the case of the limitation of a term of years,) with the interest given to the first devisee.

F. 421

Nor the purchase of the freehold by the first taker. See *Hammington v. Rudyard*, cited in *Lampet's case*, 10 Rep. 52.

F. 422

Nor forfeiture by him. *Cotton v. Heath*, Pollexf. 26.

F. 423

But the ulterior devisee may release to the first taker, which will discharge the future interest.

F. 423

An executory devise of realty may, however, be passed or estopped *at law* by fine, in like manner as a contingent remainder, (which see).

F. 551

Or by the person actually entitled coming in as vouchee in a common recovery.

F. 419

And an executory interest in realty or personalty is *assignable* in equity. F. 550

And is *deviseable*. F. 371

And is *transmissible* to, and will vest in the real or personal representatives, if not otherwise disposed of. F. 554

Even if lands descend to A. *ex parte paternâ*, subject to an executory devise, which afterwards descends on him *ex parte maternâ*, the executory devise will not be destroyed; but will take effect on the happening of the contingency: as to A. his heirs and assigns for ever, and if he die under 21 and leave no issue, then to his mother in fee; and the mother dies in the life-time of A. and then A. dies under 21; here the estate will vest in his heir *ex parte maternâ*. *Goodright v. Searle*, 2 Wils. 29. F. 561

Executory devises will be protected by a court of equity against unreasonable waste. *Dayrell v. Champness*, 1 Eq. Ab. 400. F. 562

And the court will, in case of collusion, even decree compensation. *Garth v. Hind*, 1 Ves. 524. F. 567

And see ESTOPPEL—FINE—RENTS—INTEREST.

EXECUTORS.

The delivery of a chattel by executors to the first taker for life, divests the whole estate from the executors, and vests the chattel entirely in the tenant for life, subject to the limitation over. F. 412

But equity will interpose to prevent destruction. F. 414

EXPECTANCY.

The expectancy of an heir at law, in the life-time of his ancestor, is less than a possibility, and yet may be bound *in equity*. *Hobson v. Trevor*, 2 Peere Wms. 191. F. 551

And if he levy a fine in the life-time of his ancestor, he will be estopped *at law*. F. 551

And an agreement to divide expectant legacies will be enforced in equity. *Beckley v. Newland*, 2 Peere Wms. 182. F. 550

FEE.

No *remainder, as such*, or vested interest, can be limited after a fee absolute or determinable. F. 12 F. 225

Unless such fee be made determinable on the satisfaction of certain trusts, which will certainly be soon satisfied. F. 225

But in a conveyance by way of use or by devise, an estate may be limited on a conditional determination of the preceding fee by way of conditional limitation or executory devise, if the event be within the rules prescribed by law. See **CONDITIONAL LIMITATION—EXECUTORY DEVISE**. F. 272

And two or more contingent fees may be so limited, that one of them only can take effect by way of substitution, and not as a remainder. F. 373

And that; whether at common law, or by way

of use, or by devise. See CONTINGENCY WITH DOUBLE ASPECT.

FEME COVERT.

If an estate be limited to trustees, in trust to pay the rents to a feme covert during her life for her *separate use*, and after her decease to A. in tail, the feme has such an estate in her as will make a good tenant to the præcipe in an equitable recovery.

F. 56n

And a trust estate for her separate use will coalesce with a subsequent trust for the heirs of her body. *Roberts v. Dixwell*, 1 Atk. 607. and *Burnaby v. Griffin*, 3 Ves. Jun. 266.

F. 56

B. 201

And she may, except in particular cases, dispose of her separate income, whether in realty or personalty, by anticipation. *Witts v. Dawkins*, 12 Ves. Jun. 501. And see BARON AND FEME—DOWER—RULE IN SHELLEY'S CASE.

B. 201

FEOFFMENT.

A feoffment with livery is well executed, although the deed contain the operative words "bargain and sell" only.

F. 274

And the freehold may, by agreement upon the livery, be transferred from one to another by matter *ex post facto*. Plowd. 31 a.

F. 362

FEOFFEEES TO USES.

Before the statute of uses, if the feoffees to uses had aliened without consideration or with

notice, the lands would have been subject to the old uses. F. 325

But since the statute, the feoffees have no estate in them, but what is limited to them by way of use. F. 325

And, therefore, if they make a feoffment, their feoffees take a new estate by disseisin, and do not come in either of or under the estate of which the old feoffees were seized. See SCINTILLA JURIS. F. 325

But if the old feoffees are also trustees to preserve contingent remainders, the Court of Chancery will interpose. See TRUSTEES TO PRESERVE. F. 325

FINE.

If a fine *sur conuzance de droit come ceo, &c.* be levied by a person, entitled to a contingent estate of *part* of his expectant interest, it will bind by estoppel, and take effect when the contingency arises. F. 366

But if the fine be levied of the *whole* estate, it will work to the benefit of the possession like the fine of a disseisee to a stranger. F. 366

And see Preston on Conveyancing, 301. and the cases there mentioned, where a fine *sur concessit* for years is recommended to prevent forfeiture. B. 358

But if the heir at law concur in the conveyance of the lands with all the persons entitled to particular estates, which are supporting contingent remainders, it should seem, that the necessity of a fine is precluded. F. 359

If tenant for life accept a fine *sur conuzance come ceo, &c.* from a stranger, it is a forfeiture of his estate, and the contingent remainders limited thereon will be destroyed, if the reversioner, or any subsequent vested remainder-man, enter for the forfeiture before the contingency arises. F. 323

A reversal of a fine levied by tenant for life, by act of parliament, will revive the contingent estates. F. 315

Although a reversal for error will not. F. 315

A tenant in tail cannot be restrained from levying a fine with proclamations under the statutes of H. 7. and H. 8. But he may be restrained from levying a fine at common law, which is a discontinuance of his estate. *Mary Portington's case*, 10 Rep. 36. F. 260

A fine by lessee for years or reversioner will operate by estoppel only, and not acquire the freehold as a feoffment would do. F. 220

As if an estate be limited to A. for a term of years, with remainder to B. and his heirs during the life of A. with remainder to the first and other sons of A. successively in tail male; and A. and his eldest son levy a fine to make a tenant to the præcipe, the fine will operate by estoppel only, and the recovery will be void for want of a tenant to the præcipe. *Dormer v. Packhurst*, 3 Atk. 135. F. 220

A fine levied by an heir at law in his ancestor's life-time, will operate by way of estoppel on the lands which he may afterwards take by descent. F. 551

And see ESTOPPEL—EXPECTANCY.

FORFEITURE.

Forfeiture by tenant for life will destroy the contingent remainders limited on his estate. F. 317

And equity will not interfere. F. 329

Yet if the forfeiture do not displace or divest the subsequent remainders, (such as the acceptance of a fine *come ceo*, &c. from a stranger,) and the contingency happens before the reversioner enters for the forfeiture, the remainders will vest. F. 323

And if tenant for life make a feoffment upon condition, which is a forfeiture, and enter for the condition broken before the contingency arises, the contingent remainders will vest. F. 349

Unless the reversioner enter for the forfeiture before the happening of the contingency. F. 349

Forfeiture must, however, be considered as one of the regular modes of determination incident to an estate for life, and not as operating in *abridgment* of it. F. 16

FRANCE.

See FRENCH LAW OF ENTAIL.

FREEHOLD.

The freehold may, by agreement upon the livery, be transferred from one person to another by matter *ex post facto*. Plowd. 31. F. 362

But if the freehold be limited to commence *in futuro*, it will be void. F. 23

Unless it be by will or by way of use, when

it will take effect as an EXECUTORY DEVISE OR CONDITIONAL LIMITATION, (which see). F. 23

And in the former of which cases, the intermediate freehold descends on the heir of the devisor. F. 538

And in the latter, it results to the grantor and his heirs, unless there be a preceding limitation repugnant to the implication. See IMPLICATION—RESULTING USE. F. 48

And see also RULE IN SHELLEY'S CASE—POSTHUMOUS CHILD.

FRENCH LAW OF ENTAIL.

By the old law of France, entails were limited to two degrees; but by the code Napoleon all substitutions are forbidden, except life estates to children with the absolute reversion to grandchildren; and (in case of failure of issue of the person limiting the estate,) except life estates to brothers and sisters, with the absolute property to their children. F. 568

GAVEL KIND.

Where gavel-kind lands were limited to A. and the heirs of her body lawfully begotten or to be begotten, as well *females* as males, and to their heirs and assigns for ever, to be divided equally between them, share and share alike as tenants in common; it was held, that A. took an estate for life only, as the limitation to the heirs female was incompatible with the descent, if A. had

taken an estate of inheritance. *Doe v. Laming*,
2 Burr. 1100. F. 154

HALF BLOOD.

Half blood is no impediment to the descent or succession of an estate tail through a tenant in tail to a collateral relation answering the description of heir *per formam doni*. F. 47

HEIR AT LAW.

The interest of the heir at law is always much favoured by the courts; and therefore, although in an executory devise or bequest of personalty, the courts will take hold of any circumstance or expression for confining a limitation over after a general dying without issue to a dying without issue living at the time of the death of the party, yet in the case of real estate, the construction will be different. *Forth v. Chapman*, 1 Peere Wms. 667. F. 476

And this distinction is carried to the extent of putting different constructions on the same words in the same will, in regard to the different species of property. *Forth v. Chapman*, *supra*. F. 476

If there is an executory devise of lands, and the freehold is not in the mean time disposed of, it will descend on the heir at law. F. 538

And wherever there is a preceding estate limited with an executory devise over, the intermediate profits, between the determination of the first estate and the vesting of the executory devise, will go to the heir at law, if not other-

wise disposed of. *Hopkins v. Hopkins*, Cas. Temp. Talb. 44. F. 543

An heir at law may bind his expectancy in the life-time of his ancestor *in equity*. *Hobson v. Trevor*, 2 Peere Wms. 191. F. 551

And may bind his interest *at law* by fine by way of estoppel. F. 551

HEIR LOOMS.

Heir looms rest on the protection of a court of equity. F. 413

They are not subject to the creditors of the first taker beyond his life interest. F. 415

Nor can he bind those ulteriorly interested by pawning them. F. 415

And it seems, that heir looms attached to an house cannot be used or let separately, or otherwise than with the house. F. 408

But the first tenant in tail will obtain the absolute dominion, (see CHATTELS.)

HEIR *PER FORMAM DONI*.

Under a limitation to heirs male as *purchasers*, a person answering the description as heir *special* may take, although he be not heir *general*. *Wills v. Palmer*, 5 Burr. 2615. F. 45

A contrary opinion, however, was formerly held. *Southcot v. Stowell*, 1 Mod. 226. and see ESTATE TAIL—HALF BLOOD. F. 42

HEIRS.

It is a rule of law, that if a preceding estate of freehold be limited, followed by an immediate or mediate limitation to the heir or heirs of the body of the first taker, the subsequent limitation will unite with the preceding estate of freehold, and give the ancestor an estate of inheritance. See RULE IN SHELLEY'S CASE.

F. 29

And this doctrine applies as well to trusts *executed* as to legal estates.

F. 143

But as to trusts *executory* it seems, the courts of equity will attend to the intention of the parties. See ARTICLES BEFORE MARRIAGE—RULE IN SHELLEY'S CASE—TRUSTS EXECUTORY.

F. 138

And even in some instances of conveyances at common law, where the subsequent limitation to the heirs or issue of the body, after a preceding estate of freehold in the ancestor, has been either in the singular number, or qualified and corrected by other additional words, the words "heirs" or "issue of the body" have been construed words of purchase and not of limitation.

F. 149

And see COMMON LAW—GAVEL-KIND—ISSUE, and the several cases of *Cheek* or *Clerke* v. *Day*, Moor, 593. *Archer's* case, 1 Rep. 66. *Walker* v. *Snow*, Palm. 359. *Lisle* v. *Gray*, 2 Lev. 223. *Loddington* v. *Kime*, 1 Salk. 224. *Backhouse* v. *Wells*, 1 Eq. Ab. 184. pl. 27. and *Doe* v. *Laming*, 2 Burr. 1100. there mentioned.

And such also was the construction in the case

of a devise to A. for life, with powers of jointuring; and after his decease to the heir male of his body lawfully begotten, *during the term of his natural life*; and for want of such heir male, remainder over. *White v. Collins*, Com. Rep. 289.

F. 153

And such likewise was the construction in the case of a devise to B. and his heirs lawfully to be begotten, (*that is to say*) to his 1st, 2nd, 3d, and every other son and sons successively, lawfully to be begotten, and the heirs of their bodies, &c. *Lowe v. Davis*, 2 Ld. Raym. 1561.

F. 153

And such also was the construction in the case of a devise to A. for life, with remainder to the heirs male of his body severally and successively, and in remainder one after another; as they should be in seniority of age and priority of birth, the *elder of such sons*, and the heirs male of his body being always to be preferred, &c. *Goodright v. Herring*, 1 East, 264.

B. 202

But it is to be observed that, although the words heir male or heir of the body be in the singular number, yet if they are not attended with other superadded words of limitation, they will not be words of purchase, but words of limitation.

F. 178

For a devise to A. remainder to the heir of his body, will give him an estate tail.

F. 179

And so a devise to A. and such heir as should be living at her death, and in default of such, remainder over. *Richards v. Lady Bergavenny*, 2 Vern. 324.

F. 179

And to A. for ever, and after his death, to the heir male of his body, and for want of such heir

male remainder over. *Welkins v. Whiting*,
1 Bulstrode, 219. F. 779

And to A. for life, remainder to the next heir
male, and on default of such heir male remainder
over. *Burley's case*, 1 Vent. 230. F. 179

And to baron and feme for their lives, re-
mainder to the next heir male of their two bodies.
Miller v. Seagrave, Rob. Gavelkind, 96. F. 179

And to A. for life, remainder to the first heir
male of his body, remainder over. *Trollop v.*
Trollop, Amb. 453. F. 179

Severally gave estates tail to the first taker.

And the words *first*, *next*, or *eldest*, preceding
the limitation to the heir, &c. will make no
difference, they being held as signifying the or-
der of succession. F. 180

And a devise to A. and after his decease to
his heir, has been held a fee. Per Lord C. J.
Hale, 1 Vent. 215. For the word heir is *nomen*
collectivum. F. 180

Sed vide contra, Coke, 1 Inst. 8. b.

And even if a limitation be to heirs or heir of
the body in the *plural*, and *after* a preceding
estate of freehold in the ancestor, yet if there be
superadded words of limitation inconsistent with
the nature of the descent pointed out by the first
words, it seems that the words heirs, &c. may be
words of purchase; such as to the use of A. for
life, and after his decease, to the use of his heirs
and the heirs female of their bodies. 1 Rep. 95. b. F. 183

But if the superadded words are not inconsis-
tent with the descent; as to the heirs male of
such heirs male. *Shelley's case*, 1 Rep. 93.;
or the heirs male and their issues. *Minshull v.*
Minshull, 1 Atk. 411. F. 182

Or to issue male and the heirs male of such issue male. *Dodson v. Grew*, 2 Wils. 322.

Or if the superadded words are general words of inheritance; as to heirs male of A. and his heirs for ever. *Goodright v. Pulleyn*, 2 Ld. Raymond, 1437.; or to heirs male and their heirs. *Wright v. Pearson*, Amb. 358. F. 182

It seems the words heirs, &c. will be words of limitation. F. 183

Nor does it appear, that until the case of *Per-
rin v. Blake*, 4 Burr. 2579. which was a limita- F. 156
tion to A. for life, remainder to a trustee and his
heirs, during the life of A. remainder to the heirs
of the body of A., that a different decision can
be discovered. F. 149

And this case was reversed in the Exchequer
Chamber. F. 158

And if in a conveyance to uses, there be a limi-
tation to the heirs of the body of the settlor, and
he can by implication take a resulting use of
freehold, the words *heirs of the body* will be
words of limitation. See IMPLICATION—RE-
SULTING USE. F. 48

But if an estate of freehold be *expressly* li-
mited away for his life, or he take a term of years
for his own benefit, the words "*heirs of the
body*" will be words of purchase. F. 49
F. 50

In a conveyance, however, at common law, a
man cannot make his own heirs purchasers; and,
therefore, a contingent limitation to his heirs
special would be void. F. 52

And in any case a limitation to the *right
heirs* of the grantor will be deemed part of the
reversion and old estate. F. 51

In certain cases of devise, a limitation to the heirs special of a person then living, has been held a sufficient *designatio personæ* to enable the remainder to vest, and this is an exception to the 4th class of CONTINGENT REMAINDERS (which see).

F. 210

Such as in the case of a devise to A. during the life of B. in trust for B. remainder to the heirs male of the body of B. *now living*. *Burchett v. Durdant*, 3 Vent. 311.

F. 210

And such as in the case of a remainder to the heirs male of A. to whom no previous estate of freehold was given, but to whom and to whose sons legacies were given, and an annuity was given to the heir at law. *Long v. Beaumont*, 1 Peere Wms. 229.

F. 210

And it seems that in such case, the heir special may take, although he be not heir general. *Wills v. Palmer*, supra, and *Brown v. Barkham*, 2 Vern. 729.

F. 213

If an estate be limited to A. and B. for their lives, remainder to the right heirs of him who shall die first, the heir will take by descent.

F. 30

If, at common law, an estate be devised to A. and the heirs of I. and K. the heirs will take as tenants in common, unless both I. and K. be dead at the time of the *limitation*.

F. 312

But if the limitation be by way of use or devise, the heirs may take jointly, although their interests vest at different times. See CONTINGENT REMAINDERS—EXECUTORY DEVISE.

F. 312

If a contingent remainder be limited to the heirs or heir of the body of an ancestor taking a preceding estate of freehold; as to A. and B. and

the heirs of him who shall die first, the heirs will take by descent, and the entail will be barrable by fine. See DESCENT—QUASI DESCENT—FINE. F. 34

In the case of a bequest of chattels to A. and the heirs lawful of him for ever, and if he shall die and leave no lawful heir, then over, the words "lawful heirs" will signify heirs of the body. And "leaving no lawful heirs" will be construed as meaning, "leaving no issue living at the time of decease." *Peake v. Pegden*, 2 T. R. 720. B. 474

And when the words "heirs of the body," in a limitation of personalty, can be construed as words of purchase, and as meaning *issue*, it is not deemed requisite, that the issue should *survive* the first taker so as in strictness to be heir; for it does not resemble a limitation to the heir of the body in the singular number, which would be such description as to shew, that such person as was strictly heir should take. F. 495

And see ISSUE—LIMITATION.

IMPLICATION.

An estate by implication in a conveyance to uses will arise,

1st. Where an use is limited, which cannot commence until after the decease of the grantor or covenantor; and *no use* is limited in the mean time. *Pibus v. Mitford*, 1 Vent. 372. F. 41

2ndly. Where the preceding estate is *for years only*, and is not limited to the grantor himself, or for his benefit. *Penhay v. Hurrell*, 2 Vern. 370. F. 42

And 3rdly. Where the uses already limited may *determine in his life-time*. *Wills v. Palmer*,

5 Burr. 2615. *Sed vide contra Southcot v. Stowell*, 1 Mod. 226. F. 45

But no use by implication will arise to any, save the grantor or covenantor. *Davies v. Speed*, 2 Salk. 675. *Sir T. Tippen's* case, cited in 1 Peere Wms. 359. *Harris v. Barnes*, 4 Burr. 2157. and *Roe v. Quartley*, 1 T. R. 630. F. 49

And if an estate be *expressly* limited away during the life of the grantor, &c. as to A. and his heirs during the life of the grantor, in trust for him. *Tippin v. Cosins*, Carthew, 272. F. 43

Or if an use be limited to the grantor himself for a term of years generally, or determinable on his decease. *Adams v. Savage*, 2 Salk. 679. *Rawley v. Holland*, Vin. vol. 22. p. 189. and *Else v. Osborne*, 1 Peere Wms. 387. F. 43

It seems an estate of freehold by implication will not arise, for such an estate shall never be presumed against the intent of the conveyance. F. 42

Yet in the case of a limitation of a term of years to the use of the grantor, (if there be no estate of freehold limited which can commence immediately,) it is very difficult to reconcile the doctrine, that the grantor does not take the freehold by implication, with the doctrine, that the freehold shall not be in ABEYANCE (which see.) B. 41

If lands be devised to a person for life, with a limitation over on failure of his issue, his estate for life will, by implication, be enlarged into an estate tail. *King v. Melling*, 1 Vent. 225. and *Blackborn v. Edgeley*, 1 Peere Wms. 605. F. 446

And if lands be devised to A. and his heirs, and if he die without issue, remainder over, his estate in fee will by implication be restrained into an estate tail. F. 388

But if lands be devised on failure of issue of a person to whom *no* preceding estate of freehold is limited, it seems, that if he be not *the heir at law* of the testator, an estate tail by implication will not arise to him, nor to the issue; and the remainder over will be void, as limited to take effect at a time exceeding the limits prescribed by law, *Moor v. Parker*, *Ld. Raym.* 37. *Lanesborough v. Fox*, *Cas. Temp. Talb.* 262. and *Jones v. Morgan*, in *Chan.* 1773. F. 447 F. 451

If however the person, on failure of whose issue the next limitation is to take effect, be the heir at law of the devisor, it seems very doubtful, whether he will not, although no preceding estate of freehold be limited to him, take an estate tail by implication. See *Walter v. Drew*, *Com. Rep.* 373. where it was so determined. *Sed vide contra Lanesborough v. Fox, supra.* F. 477

And an estate by implication may arise in a devise by *matter of reference*; as where A. devised (in default of issue male of B.) to the heirs male of the sons of C.; and then, in a subsequent part of the will, explaining in what manner he had devised his estates; he said, "and for want of B's. having sons, to the sons of C. and for want of such sons then over. *Hayes v. Foord*, 2 *Bl. Rep.* 698. Here it was held, that the sons of C. took estates for life by implication; which united themselves to the limitation to their heirs male, and gave them estates tail. F. 50

INFANT.

See EN VENTRE SA MERE—VERBA DE PRESENTI.

INTEREST.

It was formerly held, that although an executory bequest over of the principal of a sum of money, after a bequest of the *interest* for life, was good, yet that such a bequest, after a bequest for life of the *principal*, was not valid; but that the whole vested in the first taker. This distinction, however, is now exploded, and the executory bequest over in either case is good, if within the rules prescribed by law. See CHATTELS—EXECUTORY DEVISE—PERSONAL ESTATE.

F. 475

And it must be observed, that although in the case of an executory devise of realty, the rents will, during the suspense, (if not otherwise disposed of) go to the heir at law, yet, that in the case of a bequest of personalty, the interest will, if there be no residuary or particular bequest thereof, accumulate for the benefit of the person next entitled to take under the limitations. *Atkinson v. Turner*, Barnardiston's Rep. 74. *Studholme v. Hodgson*, 3 Peere Wms. 300. and *Bullock v. Stones*, 2 Ves. 521.

F. 546

And to this doctrine, particular attention must be paid, when it is intended, that during the suspense, the interest shall be applied for the benefit of the party presumptively entitled.

B. 545

If the money be declared to be in trust for the children equally, with the usual proviso, that if any of them being sons shall die under 21, or being daughters shall die under that age and unmarried, their respective shares shall go over to the survivors; the children will take *vested* interests, subject to be divested on the happening of the

contingency, and consequently will be immediately entitled to the interest of the money. B. 545

But if the trusts be for such of them as being sons shall attain 21, and, being daughters, shall attain that age or marry, their shares will be *contingent*, and consequently they will not be entitled to the interest during the contingency, unless there be proper clauses to that effect. See PORTIONS. B. 546

INTERVENING LIMITATIONS.

An intervening contingent limitation will not prevent a subsequent limitation from vesting, if the intervening contingent limitation be not in fee; but where it is in fee, all subsequent limitations must also be contingent, unless the intervening limitation in fee be for some particular purpose only. F. 223 F. 225

And an intervening contingent estate will not prevent a subsequent estate of inheritance to the heir or heirs of the body uniting with a preceding estate of freehold in the ancestor. See RULE IN SHELLEY'S CASE. But in such instance the inheritance will be executed *sub modo*, and will admit the contingent estates, when they arise. See CONTINGENT REMAINDERS—SUB MODO. F. 223

But whether the wife will in such last-mentioned case be entitled to dower, if the contingency never arise, and be determined by the decease of the ancestor, seems to be a question. See DOWER. F. 346

Although there is no doubt, that if the intervening estate be *vested*, and be commensurate

with the life of the ancestor, she will not be so entitled. *Duncomb v. Duncomb*, 3 Lev. 487. and see DOWER.

F. 346

ISSUE.

The word issue comprehends both male and female, and in *legal* construction is a word of purchase and not of limitation.

F. 106

And if a feoffment be made to A. and his issue, A. will take an estate for life only. Per Lord Thurlow, in *Knight v. Ellis*, 2 Brown's C. C. 570.

B. 492

And in marriage articles, the issue are deemed purchasers for a valuable consideration.

F. 112

And both in articles before marriage and other trusts executory, a limitation to the issue will be construed a word of purchase.

B. 117

And in a settlement *pursuant to articles*, the limitations for the benefit of the issue should be to first and other sons successively in tail male, with remainder to the daughters in tail. *Hart v. Middlehurst*, 3 Atk. 372. And see also *Lord Glenorchy v. Bosville*, Cas. Temp. Talb.

F. 105

F. 117

In a will, however, the word issue will create an estate tail.

B. 492

As to A. and his issue, remainder to B. and his issue, remainder to the heirs of A. *Goodright v. Wright*, 1 Peere Wms. 397.

F. 165

And so, even if there are other words of limitation superadded, not inconsistent with the descent. As to A. for life, and after his decease to the use of the issue male of his body, and the heirs male of the body of such issue male. *Dodson v. Grew*, 2 Wills. 322.

F. 182

And as to A. for life, remainder to the issue male of the body of A. and to their heirs, and for want of such issue then over. *King v. Burchell*, Amb. 378.

F. 163

But the word "*issue*" does not bend so easily to the RULE IN SHELLEY'S CASE (which see) as the words "*heirs of the body*."

B. 203

For in the case of a devise to A. for life, without impeachment of waste, and if he should have any issue male, then to such issue male and his heirs. *Loddington v. Kime*, 1 Salk. 224.

F. 152

And in the case of a devise to A. for life *only*, and after his decease to the issue male of his body, and to the heirs male of such issue. *Backhouse v. Wells*, 1 Eq. Ab. 184.

F. 152

It was held, that the ancestor took an estate for life only, with a contingent remainder to his issue male as purchasers.

F. 152

And even in some cases, the word "*issue*," unattended with any engrafted words of limitation, is a word of purchase, where the word *heirs* or even *heir* in the singular number is not.

F. 153

But it should be observed, that in those cases in which the word "*issue*" can be deemed a word of purchase, and the limitation to such issue be in fee, with a limitation over "*in default of such issue*," the estate in fee will not be restrained into an estate tail, if it appear that the failure of issue applies to the issue of the parents, and not of the children, but the estate over will be considered as limited to take effect on the contingency of there being no issue of the parents. See CONTINGENCY WITH DOUBLE ASPECT.

F. 376

But in *Beck's* case, Lit. Rep. 159. in the case of a feoffment to the use of A. for life, remainder

to the first son of A. that should have heirs male of his body, and to his heir in *perpetuum*, and in default of such issue *of his body*, then over; it was held, that the first son took an estate tail only. F. 353

And so; where lands were devised to A. for life, and after her decease then to go and be enjoyed by the children of her body begotten, and their heirs, *if she should have any*, and in default thereof, then over. *Ives v. Legge*, 3 T. R. 488. F. 377

And so; where lands were devised to A. for life, and after her decease to such issue of her body as should be then living, and the heirs of such issue; and if *all such issue should die without issue*, then over. *Doe v. Reason*, cited 3 Wil. 244. F. 379

However, in the case of *Keene v. Dickson*, 3 T. R. 495. where the devise was to A. for life, with remainder to her first and other sons in tail general, and, for default of such issue *male*, remainder over, the court applied the failure of issue to the sons themselves, and not to their issue, and held that the estate over was void on the birth of a son. F. 379

If lands of inheritance be devised to A. for life, with a limitation over on a general failure of issue of his body, he will take an estate tail by implication. *King v. Melling*, 1 Vent. 225. and *Blackborn v. Edgeley*, 1 Peere Wms. 605. F. 446

But not so, if the failure of issue be restrained to the time of his decease, as to A. for life, and if he die without issue *living at his decease*, then to B. in fee. *Plunket v. Holmes*, 1 Leq. 11. F. 341

Nor will such an estate by implication arise on a general failure of issue, if there be not a preceding estate of freehold for the estate by im-

plication to work upon. *Moore v. Parker* Ld. F. 446
Raym. 37. and *Lanesboro' v. Fox, Ca. Temp.*
Talb. F. 447

Nor will an estate by implication in such case arise to the issue as purchasers. F. 449

But in a case where a term of years was limited to A. for life, remainder to the sons of the marriage successively, and the heirs male of their respective bodies, and *in default of issue male of A.* then over. Although it was held that A. took an estate tail, yet it does not seem but that, as it was not a limitation of lands of inheritance, the failure of issue might have been referred to the sons of the marriage. *Higgins v. Dowler*, 1 Peere Wms. 98. F. 512

And although a limitation over in a devise after a general dying without issue is void, both as to personalty and realty, yet in the case of a bequest of personalty, the courts will lay hold of any expression to restrain the generality of the dying to a dying without issue living at the time of the decease. See EXECUTORY DEVISE. And see *Bigge v. Bensley*, 1 Brown. C. C. 187. B. 471

And it must be observed, that where, in a devise of personalty, a limitation to "*heirs of the body*" can be construed as a limitation to the issue, and entitling them to take as purchasers, the issue need not survive the parent to answer the description of heirs; although, if the limitation were in the singular number, the construction would be otherwise. F. 495

And if *personalty* be bequeathed in trust to A. expressly for life, and after his decease in trust for his issue male, and in default of such issue, over, Lord Thurlow held that the issue will take as purchasers. *Knight v. Ellis*, *supra*. F. 491

JOINTURING, POWER OF,

The power of jointuring, given to an ancestor after whose preceding estate of freehold a remainder, either mediate or immediate, to the heirs of his body is limited, is not sufficient ground for denying the operation of the RULE IN *SHELLEY'S CASE*, (which see.) F. 159

Nor does such a power necessarily exclude the intention of the devisor to limit an estate tail. For a tenant in tail cannot make a jointure without discontinuing or barring his estate tail. *Broughton v. Langley*, 2 Ld. Raym. 873. 2 Salk. 679. F. 159

THE KING.

The king cannot stand seised to an use. F. 282

And if an estate be enlarged on condition, the lands, where the reversion is in the king, will be divested, and will vest in the person entitled, without a petition or *monstrans de droit*. F. 280

LANDLORD AND TENANT.

A condition of re-entry may be reserved to the landlord on the bankruptcy of the tenant. *Roe v. Galliers*, 2 T. R. 133. B. 249

And on his partial or general alienation. B. 249

LAW OF ENGLAND.

An inconceivable proportion of the law of

England is made by the decision of the courts of justice, without the interference of the legislature, and even in some instances in direct opposition thereto; such as in the case of common recoveries and other devices to elude the law of entail; and such as the whole law of trusts.

B. 88

LEASES.

All renewed leases are subject in equity to the old trusts.

F. 498

And provisoes in leases restraining partial or general alienation are good. See ALIENATION. B. 249

And it seems, that executory devises of leases for 21 years or for lives, are good, although exceeding the period allowed by law for the vesting of executory devises.

B. 500

Unless there exist a tenant right of renewal. B. 501

If a lease be made by a distinct instrument to commence after the decease of A. without issue, it seems to be good in its creation, and not to be barrable by common recovery, but will be void if A. die leaving issue, although such issue afterwards fail.

B. 611
Appendix

LEASE AND RELEASE.

Lease and release by tenant for life will not destroy contingent remainders limited on the determination of his estate.

F. 322

Unless executed by legal tenant for life to the next vested remainder-man or reversioner.

B. 322

Or unless the next vested remainder-man or reversioner concur therein.

B. 322

LEASES FOR LIVES.

An estate *pur auter vie* cannot, strictly speaking, be entailed, for the statute *de donis* extends to estate of inheritance only.

F. 496

But if an estate *pur auter vie* be limited by words, which in lands of inheritance would create an estate tail, the person entitled will take a descendible freehold.

F. 497

If he die without making any disposition of the estate, it will descend to the heirs of his body, and on failure of issue will devolve on the remainder men. *Low v. Burron*, 3 Peere Wms. 262.

F. 496

And a remainder man will take as a special occupant. *Wasteney v. Chapple*, 1 Brown's P. C. 457.

F. 498

But any person so entitled may bar his own issue and the remainders over.

1st. By the *surrender* of the old lease, and the acceptance of a new one, even without the concurrence of the trustees. *Baker v. Bayley*, 2 Vern. 225.

F. 498

2ndly. By lease and release, and (in the case of a feme covert) by fine. *Duke of Grafton v. Hammer*, 3 Peere Wms. 266, or by any other mode of conveyance, as even articles in equity. *Norton v. Frecker*, 1 Atk. 524.

F. 499

And, 3dly, in the opinion of Lord Kenyon in *Doe v. Luxton*, 6 T. R. 289. by *devise*.

B. 496

An estate *pur auter vie* may however cer-

tainly be confined to one *for life* only. *Low v. Burron*, supra:

F. 499

And where an estate *pur auter vie* was limited to A. for life, and after his decease to the use of his issue lawfully begotten; and for want of such issue over, it was held, that the limitation over was good, as the words, "For want of such issue," meant "not leaving issue." *Williams v. Jekyll*, 2 Ves. 681.

F. 500

And even if an executory devise be limited in estates *pur auter vie*, on an event, which, in the case of a like devise in lands of inheritance, would exceed the limits prescribed by law, it seems, that the executory devise may be deemed good, as it cannot possibly be prevented vesting (if at all) within those limits, viz. a life or lives in being;—unless there be a tenant right of renewal.

B. 500

B. 501

LEGACIES.

It is a rule in equity, that when the *gift and time for payment* of a legacy out of *personal* estate, are *distinct* (as when a legacy is made *payable* at 21, or some other determined period) the legacy will forthwith vest.

B. 555

But when the legacy is payable out of *real estates*, and the legatee die before the time appointed for payment, the legacy will sink into the inheritance, whether the gift and time of payment are distinct or not. *Paulett v. Paulett*, 2 Vent. 366.

B. 556

Except where the payment of the legacy is

postponed, until the determination of a life estate in the lands. *King v. Withers*, 3 Peere Wms. 414. *Godwin v. Munday*, 1 Brown's C. C. 191. B. 556

And if legacies are charged upon both personalty and realty, the personalty will be *first* liable; and the legacies, so far as they are payable out of the distinct estates, will be affected by the different rules for vesting. *Chandos v. Talbot*, 2 Peere Wms. 601. *Prowse v. Abingdon*, 1 Atk. 482. B. 557

And even in the case of legacies charged on personalty, although the gift and time of payment be distinct, yet the event on which the legacy will be payable must be such as the law deems *certain and fixed*, such as the attainment of a certain age; for if the event be uncertain, such as marriage, &c. the legacy will not vest. B. 554
But see *Booth v. Booth*, 4 Ves. Jun. 399. And see RESIDUE.

And as well in the case of realty as personalty, if *the time is affixed to the legacy*; as to A. at 21, or at some other certain or determinate period, the legacy will be contingent.

There are, however, exceptions to the rule.

1st. If the intermediate profits are given to the legatee, or for his benefit. *Hanson v. Graham*, 6 Ves. jun. 239. B. 553

2ndly. Where the legacy is first bequeathed to one for life, and *after his decease* to another. *Monkhouse v. Holme*, 1 Brown's C. C. 298. *Benyon v. Maddison*, 2 Brown's C. C. 75. and *Wadley v. North*, 3 Ves. Jun. 364. B. 553

Unless, in some instances, where the interest

or income only has been bequeathed to the first taker for life, and the principal has been bequeathed at his decease. *Batsford v. Kebbell*, 3 Ves. Jun. 363.

B. 554

And 3dly, where a legacy is engrafted by way of executory devise, to take effect on a contingent event, as the death of A. without issue, who shall attain 21. Here the legacy will be transmissible to the personal representatives of the person presumptively entitled. See EXECUTORY DEVISE.

B. 554

If a legacy be bequeathed to children, transferable to them at their respective ages of 21 years, or marriage with consent, and with an executory bequest over to the others of them, on the death of any under 21, or marriage without consent, the personal representative of a child attaining 21, and dying before any forfeiture accrues, will be entitled to an equal share in a forfeited share with the surviving children.

F. 560

In framing provisions for legacies, attention should be paid, so that,

1st. That the time of vesting may be distinctly stated.

B. 557

2ndly. That the event on which the legacy is to go over, be consistent with the event on which the legacy is made liable to vest in the first taker.

B. 557

And, 3dly, that if the time of vesting and of payment be distinct, the event on which it is to go over be made to be in default of the event on which it is to vest, and not of that on which it is to be payable.

B. 558

LIMITATION TO BAR DOWER.

In the power, which is usually given in this limitation, it seems sufficient to require, that the deed should be *legally executed*.

B. 347

And it is useless to extend the power to a disposition *by will*. And see DOWER.

B. 347

LIMITATION.

If there be a joint limitation of the freehold to several, followed by a joint limitation to their heirs, the fee will vest in them jointly.

F. 35

But if there be a joint limitation to several men, or several women, or to a man and a woman, whose relative situation renders the possibility of issue between them more remote than a common possibility, or is inconsistent with the laws of marriage, they will take joint estates in the freehold with several estates of inheritance.

F. 36

And if the freehold be limited to several *successively* for their lives, with remainder to the heirs of their bodies, they will take several estates in the freehold, with a joint remainder in tail.

F. 36

But if the limitation be to baron and feme for their lives, and the life of the survivor of them, and afterwards to the heirs of their bodies, they will take an estate tail executed. *Denn v. Gil-*
lot, 2 T. R. 431.

F. 37

F. 38

If, however, a limitation be to baron or feme singly, for his or her life, with remainder to the

of both their bodies, this will be no remainder in him or her taking the estate for life, but a contingent remainder in the heirs; and see *Lane v. Pannell*, 1 Roll. Ab. 238. *Frogmorton v. Wharrey*, 3 Wil. 125. F. 38
F. 65

And if an estate be limited to two, and after their deaths to the heirs of one of them, or to baron and feme and the heirs of the body of one of them, or to two men or two women and the heirs of their two bodies, or the heirs of the body of one of them, the estate of inheritance will be executed *SUB MONO*, (which see.) F. 36

If there be a joint limitation to baron and feme and a stranger, the baron and feme will take one moiety, and the stranger the other. F. 40

If a limitation *at common law* be to the right heirs of A. and B. to whom no preceding estate of freehold is limited, the heirs will take as *tenants in common*, unless A. and B. be both dead at the time of the gift, as the estates will vest at different times. But by way of use or devise, such a limitation it seems will vest the lands in the heirs as *joint tenants*. F. 312

If a limitation be to A. for life, with remainder to the right heirs of himself and B. (B. being then alive,) it has been considered, that A. has an estate in the inheritance executed for a moiety. F. 39

If a limitation be to the right heirs of baron and feme, *as purchasers*, the limitation will be considered as meaning "heirs of their bodies." F. 40

And in the consideration of limitations in tail, great attention should be paid to the application of the word "of," as annexing the estate

of inheritance to the ancestor; as in the case of a feoffment to baron and feme, for their lives, remainder to the heirs of the body of the wife, by the baron to be begotten, *Peps v. Bonham*, Yelv. 131. Here it was held that the inheritance was in the wife only.

F. 39

But if the limitation do not express the body of which parent the heirs shall be, as to baron and feme, for their lives, remainder to the heirs *on* the body of the feme *by* the baron to be begotten, the baron and feme will take a joint estate tail executed.

F. 40

As to what words in a limitation will give a *legal* estate, and what a *trust* estate, see WORDS.

And see also **CONDITIONAL LIMITATION—CONTINGENT REMAINDER—CONTINGENCY WITH DOUBLE ASPECT—IMPLICATION—ISSUE—RESULTING USE—RULE IN SHELLEY'S CASE, and VERBA DE PRESENTI.**

MARRIAGE.

If lands be limited to A. in tail, upon condition that she marry with the consent of certain other persons, and in case she marries without such consent, then over, the limitation over upon her marriage without consent will take effect as a *conditional limitation*, and vest the estate in the person entitled without claim or entry. *Lady Ann Fry's case*, 1 Vent. 199. See **CONDITIONAL LIMITATION.**

F. 273

MERGER.

The extinguishment of an estate by merger, must be by its union with a greater estate out of which it arose, and of which it may be considered as part, or at least as an extraction.

F. 561

And, if lands descend *ex parte paternâ* on A. subject to an executory devise, which afterwards descends on him *ex parte maternâ*, the executory devise will not thereby be destroyed, it being a collateral interest, but will take effect on the happening of the contingency. *Goodright v. Searle*, 2 Wils. 29.

F. 561

MINORITY.

If an estate be limited to trustees and their heirs, during *minority*, they will take a *life estate*, but if the estate be limited to them and their heirs, *until* A. attain 21, they will take a *fee simple determinable*.

F. 226

If a feoffment be made to A. in fee, with a condition, that if he shall die, his heir being under age, the estate shall cease during the minority of the heir, the condition will be void, for estates cannot be made to vest and cease and revest. See CONDITION—ESTATE.

F. 527

MONEY TO BE LAID OUT IN LAND,

Money is frequently directed to be laid out in the purchase of land, and settled in such manner, as (if the same words were used in a

devise of the lands themselves) would give the first taker an estate tail; and the difficulty in cases of this sort is in determining, whether the Court of Chancery may not, in compliance with the supposed intent of the testator, direct a strict settlement. "The real guide," said Lord Keeper Henley, in *Austen v. Taylor*, Amb. 376.³⁴ is, that where the assistance of the trustees, which ultimately is the assistance of the court, is prayed in aid to complete a limitation, which in that case is not completed by the will, it is a sufficient declaration of the testator's intention, that the court shall model the limitations, but where the trust and limitations are expressly declared, the court has no authority to make them different from what they would be at law."

F. 142

Thus, where money was by will directed to be laid out on land, *and settled* to the use of A. and her children, and if she died without issue then over. *Sweetapple v. Bindon*, 2 Vern. 536.

F. 112

And thus, where money was by will directed to be laid out on land, *and settled* to the use of A. for life, and after his decease to the heirs male of his body lawfully to be begotten, and the heirs male of every such heir male, severally and successively as they should be in priority of birth, and for want of such issue, then over. *Legate v. Sewell*, 1 Peere Wms. 87.

F. 113

And thus where the residue of personalty was by will directed to be laid out on land, and to *remain, continue, and be* to the use of A. for life, remainder to trustees to preserve contingent remainders, remainder to the heirs of the body of A. *Austen v. Taylor*, *supra*.

F. 133

It was held, that the ancestor took an estate tail, although in the case of marriage articles, where the issue are considered as purchasers for a valuable consideration, similar directions would probably receive a different construction. F. 112

But where money was directed by will to be laid out on land, *to be conveyed* and settled to the use of A. for life without impeachment of waste, remainder to trustees to preserve contingent remainders, remainder to the heirs of the body of A. remainder over, with a power to A. to make a jointure, it was held, that A. took an estate for life only. *Papillon v. Voice*, 2 Peere Wms. 471. F. 142

And Lord Camden also took the distinction between the cases, where the testator has given complete directions for settling his estate, with perfect limitations, and where his directions are incomplete, or rather minutes and instructions. F. 184

And therefore, where money was by will directed to be laid out on land, *as counsel should advise*, and settled to the use of A. and the heirs male of his body to take in succession and priority of birth, with remainder over; and until the purchase, the interest to be paid to A. and his sons and issue male, who would be entitled to the rents of the lands if purchased, it was held, that A. should have an estate for life only. *White v. Carter*, Amb. 670. F. 184

In those cases in which the ancestor is entitled to an estate tail in lands directed to be purchased and settled, if the ancestor be a *feme covert*, the husband will be entitled to an estate by curtesy, although the lands be not purchased in the lifetime of the feme, and he will receive the

interest in lieu of rents until the purchase.
Sweetapple v. Bindon, supra.

F. 113

NEMO EST HÆRES VIVENTIS.

It is a principle of law, that *nemo est hæres viventis*.

F. 210

And therefore a limitation to the right heirs of a person then living, to whom no preceding estate of freehold is given, is contingent.

F. 9

Nor can any one, as *heir*, take in the lifetime of his ancestor.

F. 169

Nor after the decease, unless the ancestor die during the continuance of the particular estate, or *eo instante* that it determines.

F. 316

But, nevertheless, there are cases of devise, in which a limitation to the heirs special of a person then living, has been held a sufficient designation of the person for the remainder to vest.

F. 210

See DESIGNATIO PERSONÆ — DEVISE — HEIRS.

NOTICE.

Before the statute of uses, a person purchasing of the feoffees to uses, with notice, or without consideration, would have taken the land subject to the uses, for their alienee came in either of the same estate as that of the feoffees, or of an estate derived out of it.

F. 325

And thus, in the present day, if trust estates be purchased either without valuable consideration or with notice, the lands will remain

subject to the trust. *Mansel v. Mansel*, 2 Peere Wms. 678.

F. 327

But if lands be now purchased of the feoffees to the uses, who have no estate in them but what is executed by the statute, and if they be not trustees to preserve contingent remainders, a purchaser will not be affected by notice of the uses.

F. 325

If, however, the feoffees are also trustees to preserve contingent remainders, the general doctrine, as to the purchase of trust estates, will have effect.

F. 326

In any case, however, of a purchase of trust estates, if the purchase be without notice, and for a valuable consideration, the *cestui que trust* has no remedy against the purchaser, but against the trustees only, who will be decreed out of their own monies to purchase lands of equivalent value with those sold. *Mansel v. Mansel*, supra.

F. 326

OCCUPANT.

Strictly speaking, there is no general occupancy of a rent.

F. 306

And therefore, before the statutes of the 29 Car. 2. c. 3. and 14 Geo. 2. c. 20. if a rent had been limited *pur auter vie*, with a contingent remainder over, and the grantee of the particular estate had died during the life of the *cestui que vie*, and before the remainder had vested, it may be doubted, whether the remainder could have been supported by the terre-tenant holding the land discharged of the rent.

F. 305

But now there seems no room for a doubt, as, since the statutes above mentioned, the rent is holden to continue in the *representatives* of the grantee dying in the lifetime of the *cestui qui vie*. See RENT—SPECIAL OCCUPANCY. F. 306
Sed quære, and see 2 Bl. Comm. 260.

OFFICE.

Grants, by the king, of offices not previously subsisting in fee, may be made *in futuro*. F. 530

Office found for the king will presume a fee. F. 283

But the 33 of H. 8. cap. 8. which vests the estates of person attainted of high treason in the crown, without office found, confers on the crown such estate only, as if a special office had been found; that is, such an estate only as the person attainted had. *Linch v. Coote*, 2 Salk. 469. And see ATTAINDER. F. 283

PARTICULAR ESTATE.

There are three species of particular estate, for years—for life—and in tail. But, at common law, the two first only could be created by the party himself, the statute *de donis* authorised the third. B. 3

Every remainder of freehold requires a preceding particular estate, which must be created at the same time, and must be continued until the time when the remainder is to vest in possession. For, unless by way of conditional limitation or executory devise (which see), an estate of freehold cannot be made to commence *in futuro*. F. 23

If a remainder is capable of being executed immediately in possession, supposing the particular estate then to fail, that remainder may be deemed *vested*.

F. 216

And all *contingent* remainders appear to be so far reducible under one head, as to depend for their vesting on the happening of an event, which by possibility may not happen during the continuance of the particular estate, or *eo instanti* that it determines.

B. 10

However, in the case of a limitation of a long term of years, determinable on the decease of a person in esse, with remainder over to another person in esse on the decease of the *cestui que vie*, there, as it is improbable that the *cestui que vie* will survive the term, the remainder will be considered vested.

F. 21

And it must be observed, that if a remainder once vests by a good title, it seems it will remain good, although the particular estate be immediately suspended or even avoided for want of title in the grantor as to the particular estate, or by the refusal of an infant on coming of age, as against whom the particular estate was not void but voidable.

F. 308

And if a rent be granted to the terre-tenant for life, remainder over, the remainder will be good, although in fact there is no particular estate. *Salter v. Butler*, Yelv. 9.

F. 308

The particular estate sufficient to support *contingent* remainders must, however, be of freehold, for a particular estate for years is not sufficient for that purpose.

F. 281

And if the particular estate be destroyed before

the happening of the contingency, the contingent remainder will also be destroyed. F. 317

A present right of entry however, existing at the time of the happening of the contingency, will support the contingent remainders, although a right of action will not. F. 286

But if no particular estate, or right of entry in respect thereof, be in esse when the remainders vest, the revival of the particular estate, as by the reversal of a fine for error, will not revive the contingent remainders, unless, it seems, in the particular instance of the reversal of a fine *by act of parliament*. F. 315

Although the *suspension* merely of the particular estate will not destroy contingent remainders, if the particular estate becomes again vested before the happening of the contingency. F. 349

Nor will the severance of the particular estate, nor a release by one joint tenant to another. F. 339

Nor will the merger of the particular estate, in a subsequent remainder or the reversion, destroy intermediate contingent remainders, if the particular estate and remainder or reversion be created in the same instrument with the contingent remainders, or if the fee descend immediately from the ancestor, by whose will the particular estate and remainders were created. F. 340

See CONTINGENT REMAINDERS—REMAINDERS—VESTED REMAINDERS. F. 34

PARTITION.

Partition between coparceners, that one shall

have the land from Easter to the 1st of August, and the other from the 1st of August to Easter, is good only in respect to the possession and taking of profits, but is no severance of the inheritance.

F. 527

A partition, however, between coparceners or joint tenants to present to an *advowson by turns*, will take effect as a severance under the 17 of Ann, cap. 18.

F. 527

PERPETUITY.

Any limitation in future, or by way of remainder, which tends to a perpetuity in lands of inheritance, is void in its *creation*, even although supported by a preceding estate of freehold. Such as a limitation to A. for life, and after his decease to his unborn children and the children of such unborn children; or as to an unborn child for life, with remainder to his children in tail. *Humberstone v. Humberstone*, 1 Peere Wms. 332.

F. 508

Nor can a perpetuity be effected by a limitation in trust, any more than it may by a limitation of a legal estate.

B. 538

But, however, future interests, springing trusts, trusts executory, and remainders which are to arise upon contingencies, are neither within the rule or the reason which denies effect to limitations affecting a perpetuity, if the period for their vesting be not of too remote consideration.

F. 276

And see CY PRES DOCTRINE, and POSSIBILITY UPON A POSSIBILITY.

PERSONAL ESTATE.

A bequest of the dividends or interest of stock is equivalent to a bequest of the stock itself. F. 466

Personal estate can only be settled by way of executory devise or executory trust. B. 567

And must be confined within the bounds of executory devise of realty. F. 567

And during the period of suspense of vesting, the profits will accumulate for the benefit of the person who shall first become entitled (if not otherwise disposed of). B. 545

But the profits will pass by a bequest of the RESIDUE, (which see.) F. 544

And see CHATTELS—EXECUTORY DEVISE.

PORTIONS.

For the doctrine respecting the vesting and payment of portions, see *Hubert v. Parsons*, 2 Ves. 262. *Lord Teynham v. Webb*, 2 Ves. 207. B. 557

When it is intended to provide portions for children, care should be taken,

1st. that the time of vesting and of payment be distinctly noticed. B. 557

2nd. That where it is intended that the accruing as well as the original share of any child, whose portion shall not vest, shall survive to the others, this should be expressly mentioned in the surviving clause, as otherwise the accruing share will not survive unless there be a manifest implication of such an intent. B. 558

3dly. That where a power is given of appoint-

ing the fund amongst the children, it should be expressly mentioned, (if so intended,) that the children shall take *in default of appointment*.

B. 558

4thly. It should be mentioned, (unless otherwise intended) that no child taking a share under the power shall share in the residue, without bringing his or her appointed share into hotch-pot.

B. 559

And 5thly. Where a monied fund is settled on the husband and wife successively for their lives, and after the decease of the survivor on the children, it may be found convenient to give the trustees a power, with the consent of the parents, during their joint lives, to pay to any child acquiring a vested interest, any part of his vested portion; as, on account of the wife's future life interest, a payment or transfer of it, without such a power, will not be warranted.

B. 559

POSSIBILITY.

A bare possibility is not deviseable.

F. 371

Nor can a mere possibility regularly be transferred from one to another.

F. 528

But possibilities, both of realty and personalty, are assignable *in equity*.

F. 556

And an heir at law may bind his possibility by fine, by way of estoppel, even *at law*. *Hobson v. Trevor*, 2 Peere Wms. 191.

F. 551

And an agreement to divide expectant legacies will be sustained in equity. *Beckley v. Newland*, 2 Peere Wms. 182.

F. 550

POSSIBILITY OF REVERTER.

Anciently, after a grant for life or in fee, the possibility, which remained in the grantor, was indifferently called "his reverter or escheat." But when the fee was granted, it afterwards became customary to call it "a possibility of reverter."

B. 381

At present, the term is applied to the possibility, which remains in the grantor after the grant of a *limited fee*.

B. 389

But this, being a mere possibility, is not capable of being granted away.

B. 389

POSSIBILITY UPON A POSSIBILITY.

A possibility upon a possibility is never admitted by intendment of law.

F. 251

But this doctrine must not be understood in too large a sense; for a remainder to an unborn son of A. who first or alone shall attain 21, is a possibility upon a possibility, and yet is good.

B. 251

And so is a declaration of trust, in favour of the children of the unborn children of an intended marriage, who shall be living at the decease of the surviving parent, and who shall attain 21. *Routledge v. Dorrel*, 2 Ves. Jun. 357.

B. 251

POSTHUMOUS CHILD.

Notwithstanding the rule, that there must be a particular preceding estate of freehold, or right of entry in respect thereof, subsisting at the mo-

ment when the contingency, on which a remainder is limited, arises, or the contingent remainder will not take effect; yet it must be observed; that where lands are limited in remainder to children, who would be entitled if their father should live to the time of their birth, with remainder over, a posthumous child will be entitled in like manner, as if born in the father's life-time. *Reeve v. Long*, 1 Salk. 227. 10 & 11 W. 3. c. 16. *Sed quære whether the STATUTE extends to cases of devise.* See 1 Salk. 227. note.

F. 309

And it should also be remarked, that notwithstanding the rule, that every executory devise shall vest within a life or lives in being, and 21 years afterwards, allowing a few months for gestation, yet that a devise to a child *en ventre sa mere* being a son, and to such issue male, or the descendant of such issue male, as at the time of the decease of such child, shall be his heir at law, with an executory devise over, if there shall be no such issue male, or descendant of such issue male, living at the time of the decease of such child; or if such child shall not be a son, will be good, although there is a *double* allowance for a posthumous child. *Long v. Blackall*, 7 T. R. 104. 3 Ves. Jun. 386.

B. 484

POWER OF APPOINTMENT.

An use limited under an execution of a power of appointment, contained in a conveyance to uses, will in general operate as an use created by and arising under the conveyance itself.

F. 74

It was formerly held, (*Leonard Lovie's* case, 10 Rep. 85. and *Walpole v. Conway*, Barnardiston's Rep. 153.) that a general power of appointment would prevent a limitation, which was to take effect in default of appointment, from vesting during the suspense.

F. 226

But it is now clearly settled, that the limitation will so vest, subject to being divested on an execution of the power. *Cunningham v. Moody*, 1 Ves. 174. *Doe v. Martin*, 4 T. R. 39. and *Maundrell v. Maundrell*, 7 & 10 Ves. Jun.

F. 227

B. 233

Nor will it signify whether the limitation precede or follow the power.

F. 229

And the effect will be the same, even if the operation of the power be *confined* to a limitation *in fee*.

F. 231

And the general doctrine, that the power will not prevent the limitation in default thereof from vesting, applies equally to personals.

F. 229

When a trust fund is provided for children in such shares, as the parents or a stranger shall appoint, it should be expressly mentioned, whether the children are to take in default of appointment or not.

B. 558

And it should also be provided (if such be the intention) that no child shall share in the residue, without bringing his or her appointed share into hotchpot. See PORTIONS.

B. 559

POWERS.

A power to jointure does not necessarily exclude the intention of a testator to give an estate

tail; for tenant in tail cannot make a jointure without discontinuing or barring the estate tail. F. 159

And if lands be limited by will, in trust for A. for life, *with powers of leasing*, with remainder to the heirs of his body, the Court of Chancery will not therefore prevent the operation of the **RULE IN SHELLEY'S CASE**, (which see); but A. will take an estate tail. *Baile v. Coleman*, 2 Vern. 670. F. 113

Although in the case of marriage articles, the construction would be different. F. 113

PRECEDING ESTATE.

Where subsequent estates are limited on a conditional determination of a preceding estate, and such preceding estate never takes effect, (as where lands were devised to trustees for eleven years, remainder to the first and other unborn sons of A. successively in tail male, provided they should take the testator's surname; and in case they or their heirs should refuse to take the testator's surname, then over, and A. died without having had a son, *Scatterwood v. Edge*, 1 Salk. 229.) yet the subsequent estates will take effect. F. 237

But if, in such case, the preceding estate does take effect, and the event on which the subsequent estate is limited does not arise, (as to the testator's wife for life, upon condition that if she should marry again, then the house should go to the testator's eldest son, and his issue, &c. and the wife did not marry again, *Sheffield v. Lord Orrery*, 3 Atk. 282.) there, it seems, the subse-

quent limitations will not take effect, unless the apparent general intent of the testator calls for it. F. 239

If there are limitations after a preceding estate, which preceding estate is made to depend on a contingency, which never takes effect (as to A. for life, remainder to his first and other sons, by any after-taken wife in tail, with remainder to the daughters of such marriage in fee; but if A. marry any one of the blood of B. then the uses, so far as they relate to the issue of such marriage to cease, and the estates to be to the use of the testator's brothers' children in tail. And A. dies without having so married, and without issue, *Bradford v. Foley*, Doug. Rep. 63.) the subsequent limitation may take effect, if the contingency can be considered as not extending to such subsequent limitations.—See CONDITION; and see *Napper v. Sanders*, Hutt. 119. *Tracey v. Lethueller*, 3 Atk. 774. and *Horton v. Whittaker*, 1 T. Rep. 346.

F. 234

PRIVITY OF ESTATE.

Privity of estate is absolutely requisite to the standing seised to an use, that is, a person must come in of or under the same estate or seisin, out of which the uses were originally limited to arise, or he will not be seised to those uses. F. 296

As where A. covenanted to stand seised to the use of himself for life, remainder to his wife for life, remainder to his daughter for life, with remainder to her first and other sons in tail, with reversion to his own right heirs; and A. afterwards granted the reversion without consideration, reciting the

former settlement. *Wegg v. Villiers*, 2 Roll. Ab. 796. Pl. 11. Here A. by his grant passed no more than his reversion, and as his grantee took without consideration, there was privity of estate to serve the uses. F. 288 F. 298

At common law, privity of person and privity of estate were requisite to the standing seised to an use. B. 291

And these privities were held to be collateral to the estate, and not like rents or conditions which issue out of, or continue charges upon the lands, into whosoever hands they may come. B. 292

And, since the statute, trusts are become what uses were before the statute. B. 294

PROFITS.

In the case of an executory devise either of real or personal estate, the intermediate profits, as well before the vesting of any estate as between the determination of the first estate and the vesting of a subsequent estate, will pass under a bequest of the residue. *Stephens v. Stephens*, Cas. Temp. Talb. 228. *Chapman v. Blissett*, Cas. Temp. Talb. 145. F. 544

But where there is no residuary or other bequest of the profits of *personal* estate, they will accumulate during the suspense of vesting for the benefit of the person who shall first be entitled to take by virtue of the limitations. *Stodholme v. Hodgson*, 3 Peere Wms. 300. F. 546

And if the person presumptively entitled dies before the property vests in him, the accumulation will not go to his personal representatives,

but to the next entitled under the limitations:
Atkinson v. Turner, Barnard. 74.

F. 546

If lands be devised to A. in trust, to permit B. to take the rents and profits during his life, B. will have a legal estate of freehold executed, which will unite with a subsequent limitation to his heirs or the heirs of his body. *Broughton v. Langley*, 2 Lord Raym. 873. *Sed vide contra Burchett v. Durdant*, 3 Vent. 311. and see WORDS.

F. 159

And if lands be devised to trustees and their heirs upon trust, to lay out the rents and profits for the maintenance of A. during his minority, and *when and as* A. shall attain 21, then the lands to remain to him in fee, A. will take the fee immediately. *Goodtitle v. Whitby*, 1 Burr. 228. See CONTINGENCY.

F. 245

And if there be a devise to trustees and their heirs upon trust, to pay the rents and profits to a feme covert during her life, for her separate use, and after her decease to pay the same to the heirs of her body, she will take a trust estate for life, which will unite with the subsequent limitation to her heirs. *Garth v. Baldwin*, 2 Ves. 646. And see RENTS—RESIDUE.

F. 125

PROVISO.

A proviso for making an estate vest and cease, and revest, (such as a proviso, that the estate of tenant in tail shall cease during his life, or that it shall cease as if he were dead; or such as a proviso that if the feoffee die, leaving an infant heir, the estate shall cease during the minority of the heir,) is void.

F. 527

And there are certain incidents or qualities so inherent in certain estates, as to be incapable of being restrained by proviso.

F. 257

Such as the power in tenant in tail of suffering a common recovery, or levying a fine with proclamations.

F. 258

But tenant in tail may by proviso be restrained from discontinuing his estate. *Croker v. Trivithen*, Cro. Eliz. 35.

F. 260

And from leasing it. *Spittle v. Davis*, 2 Leon. 38.

In the case of *Lade v. Holford*, 3 Burr. 1416, a proviso in a will, that during such time as the tenant for life, or tenant in tail for the time being, should be under 26 years of age, the trustees should enter and receive the rents, and apply part thereof for the benefit of the tenant, and accumulate the residue, was held void.

F. 532

But it seems, that this determination proceeded on the ground, that a dry accumulation for 26 years was directed, (see ACCUMULATION,) and not on the principle, that such a trust or proviso may not be introduced, if confined to the minority of the tenant. For the estate of the trustees does not suspend the estate tail for a particular time, and continue it for the residue, but is in fact an interpolation of an estate, placing the estate tail after it, and resembling any other springing use.

B. 532

PURCHASE, WORDS OF.

When the words "heirs, &c." operate to give the estate imparted by them, to the heirs described, *originally*, and as the persons in whom the estate is to be considered as commencing,

and not derivatively, from or through the ancestor, they are properly words of purchase. F. 79

And when the words, "heirs, &c." are used as words of purchase, they comprehend in themselves, the heirs, &c. of such heir, &c. unless the limitation be expressly confined to the life of the heir, &c. as in *White v. Collins*, Com. Rep. 289. F. 80

As to the nature of the estate taken by the children as purchasers, under the description of heirs of the body, see QUASI DESCENT—QUASI ENTAIL. F. 153

And see COMMON LAW—HEIRS—RULE IN SHELLEY'S CASE.

PURCHASER.

See NOTICE.

QUASI DESCENT.

If an estate be limited to the heirs male of the body of B. to whom no preceding estate of freehold is limited, and so that the heirs male are to take as purchasers, the effect of the limitation will be, that the first person answering the description of heir male, will take an estate to him and his heirs male; and, on failure of such issue, the next heir male of the body of B. will take by a quasi descent, and thus the devolution will be continued through all the heirs male of the body of B. See QUASI ENTAIL. F. 80

And if a contingent estate be limited to the heirs, &c. of one who takes a preceding estate of freehold, but in whom the inheritance can never

in his lifetime by possibility vest, as to A. and B. for their lives, and the heirs of him who shall die first, yet the heirs will take by descent. F. 34

QUASI ENTAIL.

In *Mandeville's* case, 1 Inst. 26. b. the limitation was, "to Roberge, and the heirs of the body of John de Mandeville, by her." There were two children, Robert and Maude, and it was held, that, after the decease of Robert without issue, Maude took an estate tail, which she might recover by formedon on the descender. And this is a quasi entail; and see QUASI DESCENT, and LEASES FOR LIVES. F. 81
B. 83

RE-ENTRY, CONDITION OF.

See LANDLORD AND TENANT.

REFERENCE.

If plate, or other personal estate, be intended to be bequeathed as heir looms, a reference to a preceding devise of real estate, to which the heir looms are to be appendant, will be tantamount to an express bequest of the personalty itself. F. 521

REMAINDER.

A remainder is defined by Lord Coke to be a remnant of an estate in lands or tenements, expectant on a particular estate, created together with the same at one time. F. 12

And it is defined in Noy's Maxims, to be, the

residue of an estate at the time appointed over; and must be grounded on some particular estate, as such.

F. 16

A remainder *as such* cannot be limited after a limitation in fee, whether vested, contingent, or determinable; unless, perhaps, after a contingent determinable fee limited for special purposes only.

F. 225

B. 226

Nor is it properly a remainder, if it enures to defeat or abridge the particular estate, for it is essential to a remainder to await the regular determination of the preceding estate.

B. 10

And the real distinction between a contingent remainder and a conditional limitation, consists in this, that the first must await the regular determination of the preceding estate, whether it lie in possession or remainder, in livery or grant, and the latter may enure to defeat or abridge the particular estate. See **CONDITIONAL LIMITATION—CONTINGENT REMAINDER.**

F. 14

And this distinction seems much to depend on the wording of the limitation; for, if lands be limited to A. for life, if he shall so long continue single, or to A. and the heirs of his body, if he and they shall so long continue lords of the manor of Dale, the remainder over will strictly take effect as such, the determining quality of the estate being considered as forming part of the original limitation.

B. 12

But if the limitations had been to A. for life, with a proviso, that if he married, his estate should cease; or to A. and the heirs of his body, with a proviso, that on A. or his issue ceasing to be lords of the manor of Dale, the estate tail

should cease, the limitation over would take effect as a conditional limitation.

B. 13

If a remainder has once vested by a good title, it seems it will not be affected by an immediate suspense of the particular estate, or by a want of title in the grantor as to that estate, nor by the refusal of an infant, when of age, as against whom the particular estate is voidable only, and not void.

F. 306

If a limitation can take effect as a remainder, it shall never enure as an executory devise, or future use. *Goodtitle v. Billington*, Doug. Rep. 725.

F. 267

If a remainder be limited to take effect on a condition annexed to a particular estate, and such particular estate never takes effect, yet the remainder may be good. *Scatterwood v. Edge*, 1 Salk. 229.

F. 237

But if, in such case, the particular estate once takes effect, and the event, on which the subsequent estate is limited, does not arise, it seems the remainder will fail, unless the apparent intent of the testator calls for it. *Sheffield v. Lord Orrery*, 3 Atk. 282.

F. 239

If a remainder be limited on a preceding estate, which preceding estate is made to depend on a contingency, that never takes effect, yet the remainder may not be affected thereby, if such be the intent of the testator. *Bradford v. Foley*, Doug. Rep. 63. *Napper v. Sanders*, Hutt. 119. *Tracey v. Lethueller*, 3 Atk. 174. and *Horton v. Whittaker*, 1 T. Rep. 346.

F. 234

If a condition be annexed to a particular estate, and a remainder, independent of the condi-

tion, be limited on the particular estate, it seems that the remainder will destroy the condition. F. 270

Yet perhaps, in the case of a *devise*, the limitation over may in such case be considered to be a conditional limitation, if such be the apparent intent of the testator. F. 272

A subsisting vested remainder, although it wait for a future possession, is yet a present fixed interest, and capable of being disposed of and devised as such. F. 447

And an estate may be so limited as to take effect as an executory devise if a preceding estate should fail, or as a remainder thereon, if such preceding estate should vest. *Brownsword v. Edwards*, 2 Ves. 243. F. 526

See CONDITION—CONTINGENT REMAINDER—PARTICULAR ESTATE—PRECEDING ESTATE—VESTED REMAINDER.

REMOTENESS.

Although if a particular estate do not take effect at all, a subsequent limitation may nevertheless be good, yet if the first estate is void for *remoteness*, all the subsequent estates will be void also. *Proctor v. the Bishop of Bath and Wells*, 2 H. Black. 358. F. 509

RENEWAL.

All renewed leases are in equity subject to the trusts of the preceding leases. F. 498

A renewal of a lease for lives, by the first tenant in tail, even without the concurrence of

the trustees, will give him the absolute ownership. *Blake v. Blake*, 3 Peere Wms. 10. note 1. F. 496

RENTS.

Where there is an executory devise of real estate, the rents, during the suspense of vesting, will go to the heir at law, if not otherwise disposed of.

F. 543

But a devise of all the rest and residue of real estate, will pass the rents as well from the time of the testator's death to the vesting of the first estate, as from the time of the determination of the first estate to the vesting of a subsequent one.

F. 544

Where a shifting clause in a set of limitations is introduced to make an estate go over on the accession of a family estate, a limitation to trustees should be introduced to preserve contingent remainders during the suspense, and a clause be inserted directing the rents to be paid *ad interim*, to the person actually entitled to the next vested remainder. And see PROFITS—RENTS—RESIDUE.

B. 223

RENT DE NOVO.

A rent *de novo* may be made to commence in futuro.

F. 529

And may be made to vest and cease and re-vest.

F. 528

It has been doubted, whether the statute of uses will operate on a rent *de novo*.

B. 529

And if a rent *de novo* be limited to A. and the heirs of his body, and he suffer a common reco-

very, he will gain only a fee determinable on failure of issue of his body, unless the remainder be limited over in fee.

F. 529

And a question has arisen, whether, if a rent *de novo* be limited in strict settlement, the successive tenants in tail do not respectively take distinct rents.

B. 529

And, therefore, when it is proposed to make a rent the subject of limitation in strict settlement, the better way seems to be to grant the rent to a person in fee, and for the grantee to make a new grant of it to another and his heirs to the uses of the intended settlement.

B. 529

But there is no real objection to a grant of a rent *de novo* to uses, in the first instance.

B. 530

However, if lands be conveyed to the intent, that A. may receive a rent, and he is directed to stand seized thereof, to the use or for the benefit of the persons intended to be benefited thereby, A. will take the *legal* interest.

B. 529

RENT CHARGE.

If, at common law, a rent charge had been limited to A. for the life of B. with remainder to C., and A. had died in the lifetime of B. it was considered, that the remainder was supported by the terre-tenant holding the land discharged of the rent. *Salter v. Butler*, Yelv. 9.

F. 305

Although it was doubted, whether this holding discharged was sufficient to support contingent remainders.

F. 306

However, since the statutes of the 29 Car. 2. cap. 3. and 14 Geo. 2. cap. 20. by which gene-

ral occupancy was abolished, the rent will, in the case of the decease of the grantee of the particular estate dying in the life-time of the *cestui que vie*, continue in his personal representatives, which, it is presumed, will certainly support contingent remainders. *Sed quære et vide 2 Bl. Com.* 260.

F. 306

If a rent-charge in fee be granted, and a fine be levied of the lands, to the use and intent that the grantee and his heirs, if the rent be in arrear, and no sufficient distress be found, may enter, &c. this will be no condition, but a contingent or future use, and will be capable of being transferred or assigned with the rent. *Haverhill v. Hare*, Cro. Jac. 510.

F. 528

RESIDUE.

A devise of the residue of real estate will pass the rents and profits as well from the time of the testator's death to the first vesting of an estate, as from the determination of a vested estate to the vesting of the next estate. *Stephens v. Stephens*, Cas. Temp. Talb. 228.

F. 544

And the like doctrine prevails in the bequest of a residue of personalty. *Chapman v. Blissett*, Cas. Temp. Talb. 145. and see *Duke of Bridgewater v. Egerton*, 2 Ves. 122.

F. 544

And it must be observed, that when a bequest of a residue of personalty fails, the testator dies *intestate* to that extent of that property, and against such an intestacy, the courts are disposed to make every intendment; and therefore, although in the case of the bequest of a legacy

the courts require, that the time appointed for vesting shall be such, as the law holds certain, such as the attainment of 21, &c. and not such an uncertain event as marriage, &c. yet in the case of a bequest of a residue, such an uncertainty will not prevent the bequest vesting. See LEGACY.

B. 555

RESULTING USE.

In a conveyance to uses without consideration, so much of the use as is not disposed of results back to the grantor.

F. 48

And that, whether there be no estate whatever limited during his life, as in *Pibus v. Mitford*, 1 Vent. 372.

F. 41

Or whether there be a preceding limitation for years (not being limited to the grantor to his use or for his benefit,) as in *Penhay v. Hurrell*, 2 Vern. 370.

F. 25

Or whether there be a limitation of uses, which may determine in the grantor's life-time, as in *Wills v. Palmer*, 2 Burr. 2615.

F. 45

And in the two first instances, an use will result to the grantor *immediately* for his life; and in the latter, to him for life in remainder expectant on the determination of the preceding uses.

F. 48

But it must be remarked, that a resulting use will not arise to any person except the grantor.

F. 49

Nor will it arise to him, contrary to the intent of the conveyance.

F. 42

And, therefore, if an use be expressly granted away during the life of the grantor, as in *Tippin v. Cosins*, Carth. 272.

F. 43

Or if an use be limited to the grantor himself for a term of years, absolute or determinable on his decease, as in *Adams v. Savage*, 2 Salk. 679. and *Rawley v. Holland*, Vin. vol. 22. p. 169. *Else* F. 42
v. Osborne, 1 Peere Wms. 387. F. 44

No estate will result to the grantor. F. 43

Although it seems very difficult to reconcile the doctrine, that if a term of years be limited to the grantor, and no estate of freehold be limited to take effect until after his decease, there is no resulting estate of freehold in him, with the doctrine, that the freehold shall not be in ABEYANCE, (which see.) B. 41

And see IMPLICATION—RULE IN SHELLEY'S CASE.

REVERSION.

A limitation to the right heirs of the grantor, &c. is part of the old reversion, even if an estate be expressly limited away during his life. *Fenwick v. Mitford*, Moore, 284. F. 51

And it is the like on a surrender of copyholds. F. 66

Although a different doctrine was formerly held in cases of copyholds, in which no preceding estate for life or in tail was limited to the surrenderor, on the ground, that on a surrender to uses, new estates were created throughout. F. 57

But this difference is now exploded; and whether the surrenderor takes a prior estate or not, the ultimate limitation to his own right heirs will be part of the old reversion. *Roe v. Griffiths*, 4 Burr. 1952. and *Thrustout v. Cunningham*, 2 Bl. Rep. 1046. F. 68

And if the surrenderor, having surrendered to the use of his will, afterwards make a surrender to the use of himself for life with remainders over, with remainder to his own right heirs, and then makes his will, and afterwards is admitted on the surrender to uses, yet the will is good.

Thrustout v. Cunningham, supra.

F. 68

A reversion is an estate vested in interest, and should be disposed of as such.

F. 447

But the grant of a present reversion sometimes sounds futurely, when it is not so; as a grant of the reversion, *when it shall happen* after the death of the tenant for life.

F. 449

And as in the case of a feoffment by A. to the use of himself for life, and after the deaths of himself and M. his wife, to the use of B. (M. having an estate for life by a former deed.)

F. 449

And as in the case of a devise of lands, after the failure of issue of A. and A. is tenant in tail, and the devisor is seised of the immediate reversion. *Badger v. Loyd*, 1 Ld. Raym. 525.

F. 449

But a reversion is otherwise subject to the laws relating to estates in possession; and, therefore, if a man having a reversion, expectant on failure of issue male of A. devise the lands, on a general failure of issue of A. this will be too remote, and therefore void. *Lanesborough v. Fox*, Cases Temp. Talb. 262.

F. 447

A reversion, however, must be distinguished from a POSSIBILITY OF REVERTER, and from a RIGHT OF ENTRY FOR A CONDITION BROKEN (which see,) both of which are mere rights, and neither of which is capable of being granted away.

B. 399

RIGHT OF ACTION.

See ACTION, RIGHT OF.

RIGHT OF ENTRY.

See ENTRY, RIGHT OF.

RIGHT OF ENTRY FOR A CONDITION BROKEN.

By the law of tenure, the performance of services was a condition annexed to every grant. And this was originally the only condition annexed to the grant; but afterwards other conditions were occasionally introduced; and hence also arose **CONDITIONAL FEES**, (which see.) On the breach of the condition, the donor, or his heirs, might enter and resume the lands. The entry defeated the livery and all the estates thereon depending, and the grantor, or his heirs, were in of their old estate.

B. 383

This is still the law in conveyances at common law, but, since the statute of uses, **CONDITIONAL LIMITATIONS** and **EXECUTORY DEVICES**, (which see,) have been introduced, by which, on breach or non-performance of the condition, the estate will vest in a stranger without claim or entry.

F. 272

RULE IN SHELLEY'S CASE.

The rule in *Shelley's* case is an exception to

the fourth class of **CONTINGENT REMAINDERS**,
(which see.)

F. 28

And it is this: wherever the ancestor takes an estate of freehold, and an immediate remainder is limited thereon, in the same conveyance, to his heirs general or heirs in tail, the remainder, so limited, is immediately executed *in possession* in the ancestor so taking the freehold, and therefore is not contingent or in abeyance.

F. 29

And also; wherever the ancestor, by any gift or conveyance, takes an estate of freehold, and there is afterwards in the same gift or conveyance a limitation to his right heirs, or heirs in tail, after some other estate for life or in tail interposed between his freehold and such limitation to his heirs, &c.; this remainder to his heirs, *vests* in the ancestor as a *remainder*, and shall not be in contingency or abeyance.

F. 29

The origin of the rule has been variously endeavoured to be accounted for.

Lord C. B. Gilbert has given three reasons for the rule.

1st. The prejudice to the lord or donor by loss of wardship, &c. if such heirs could have been made purchasers.

2dly. The prejudice which might happen to the heirs themselves by loss of the remainder, on forfeiture by the ancestor of his estate.

And 3dly. Conformity, or parity of reason, to a limitation to A. and his heirs, &c. which *by implication* gives A. an estate for life, and more; so the other limitation gives him an *express* estate for life and more, and *expressio eorum quæ tacite insunt nihil operatur*.

F. 84

Mr. J. Blackstone has given two reasons for the rule:

1st. To prevent abeyance.

And 2dly. To accelerate the alienation of land.

F. 85

Mr. Hargrave has given one reason for the rule, viz. That it is one of the two barriers between descent and purchase. The other barrier being the rule of law, that a man shall not make his own right heirs purchasers.

F. 86

Mr. Fearn inclines to the first of the reasons given by Lord C. B. Gilbert, and the first given by Mr. J. Blackstone.

F. 86

A distinction has indeed been taken, where there has been limited an estate of freehold in the ancestor, with a mediate remainder to his right heirs, after intermediate limitations; all of which, as well as the estate of freehold in the ancestor, may determine in his lifetime, as to A. and B. during their joint lives, and after the death of either of them to C. for life, remainder to the right heirs of A. in which case it has been held, that the remainder is in abeyance, on the ground, that if the preceding estates determine in the lifetime of A. he can have no heir to take the remainder.

F. 30

But this is expressly contradicted by Perkins, 337, and the case of *Merrel v. Rumsey*, in Keble, 888.

F. 31

And thus if an estate of freehold be limited *durante viduitate*, or *pur auter vie*, with remainder to the heirs or heirs of the body of the first taker, the estates will coalesce.

F. 31

F. 39

And see also *Curtis v. Price*, 12 Ves. Jun. 89.

B. 201

And if the limitation to the heirs, &c. of any ancestor taking a preceding estate of freehold, be contingent, and the contingency happen in the lifetime of the ancestor, the remainder will vest in him; and in case of its not so happening in his lifetime, yet the remainder is so attached in him, that his heirs can only take by descent. F. 34

And that; even if the remainder cannot by possibility vest in the lifetime of the ancestor, as to A. and B. during their joint lives, and the heirs of him who shall die first, and as to baron and feme for their lives successively, remainder to the heirs of the body of the one dying first. F. 34

But in order that the particular estate and the remainder may coalesce, they must be both legal or both equitable; for if the estate in the ancestor be equitable, and the remainder to the heirs, &c. legal, the heirs, &c. will take as purchasers. See *Tippin v. Cosins*, Carth. 272. *Jones v. Lord Say and Seale*, Vin. vol. 8. fol. 262. Cas. 19. *Henry v. Purcell*, 2 Bl. 1002. *Shapland v. Smith*, 1 Brown's C. C. 75. and *Silvester v. Wilson*, 2 T. R. 444. F. 52

Although some doubt has been entertained of the correctness of this doctrine, if the estate in the ancestor be legal, and the remainder to the heirs, &c. equitable, on the ground, that the legal estate comprises the equitable; but, it should seem, that nevertheless the estates will not unite, and see *Venables v. Morris*, 7 T. R. 342. F. 58 B. 60

If the estate of freehold limited to the ancestor be legal, in trust for some other person, followed by a legal limitation to his heirs, &c. it may be doubted; whether the estates will co-

alesce, as he has not the beneficial interest in the freehold.

F. 35

But, nevertheless, as the courts of law cannot take cognizance of the trust, it should seem, that the estates must coalesce.

B. 35

If lands be limited to trustees, and their heirs in trust, to pay the rents to a feme covert during her life, for her separate use, and after her decease in trust for the heirs of her body, the trust estate for her life will coalesce with the remainder to the heirs of her body. *Roberts v. Dixwell*, 1 Atk. 607.

F. 54

And see also *Burnaby v. Griffin*, 3 Ves. Jun. 266. and *Witts v. Dawkins*, 12 Ves. Jun. 501.

B. 201

The particular estate and the remainder must be created by the same instrument; for if there be a limitation to a man's heirs, &c. by any deed or instrument, and afterwards he acquires the freehold by any other conveyance or instrument; or if he be tenant for life, and the reversion is afterwards conveyed to him by some other instrument, *Doe v. Fonnereau*, Doug. 470. the estates will not coalesce.

F. 71

F. 72

However, it seems that if the estate of freehold be limited *by deed*, and the estate to the heirs, &c. be limited *under a power of appointment* contained in that deed, the estates will coalesce.

F. 74

And it should be remarked, that the rule will apply as well in instances of trusts executed, as of legal estates. *Sweetapple v. Bindon*, 2 Vern. 536. *Baile v. Coleman*, 2 Vern. 670. *Garth v. Baldwin*, 2 Ves. 646. *Wright v. Pearson*, Amb.

358. *Austen v. Taylor*, Amb. 376. *Jones v. Morgan*, 1 Brown C. C. 206. F. 124 to 146

But in instances of ARTICLES BEFORE MARRIAGE and TRUSTS EXECUTORY, (which see,) a court of equity will direct a settlement according to the intention of the parties.

If, in the case of legal estates, or complete trusts, the estate of the first taker be declared to be without impeachment of waste, *Glenorchy v. Bosville*, Cas. Temp. Talb. 3. *Papillon v. Voice*, 2 Peere Wms. 471. F. 161

Or if powers of jointuring or leasing be given to him, *Broughton v. Langley*, 2 Ld. Raym. 873. F. 159 and *Baile v. Coleman*, supra. F. 113

Or if an intermediate limitation to trustees to preserve contingent remainders be introduced. *Colson v. Colson*, 2 Str. 1125. F. 161

Or if the limitation to the heirs, &c. be declared to be to them severally, successively, and in remainder, one after another, as they shall respectively be in priority of birth, &c. *Jones v. Morgan*, supra. F. 134

Yet, nevertheless, the rule will operate to unite the estates.

And even words of limitation, engrafted on the remainder to the heirs, &c. if not inconsistent with the nature of the descent pointed out by the first words, will not convert the limitation to the heirs, &c. into words of purchase. *Shelley's case*, 1 Rep. 93. *Minshull v. Minshull*, 1 Atk. 411. and *Dodson v. Grew*, 2 Wils. 322. F. 181

If, however, there are words of limitation en-

grafted on the remainder to the heirs, &c. inconsistent with the nature of the descent pointed out, as to A. for life, and after his decease to his heirs, and the heirs female of such heir, 1 Rep. 95, b.

F. 183

Or there be explanatory words added thereto, as a devise to B. and the heirs of his body; *that is to say*, to his first, second, and other sons, &c. *Lowe v. Davis*, 2 Ld. Raym. 1561. There, it seems the word heirs, &c. may be a word of purchase; and see *Goodright v. Herring*, 1 East, 264.

F. 153

B. 202

But where there is a limitation to heirs special, with general words of inheritance engrafted thereon, the rule will not be prevented taking effect. *Goodright v. Pulleyn*, 2 Ld. Raym. 1437. *Wright v. Pearson*, Amb. 358, and *King v. Burchell*, Amb. 379.

F. 182

And see *Webb v. Puckey*, 5 T. R. 299.

B. 203

But it does not appear, that, until the case of *Perrin and Blake*, 4 Burr. 2579, there was any case, wherein the words "heirs, of the body," standing clear of any further words of limitation, perfect, independent, and unexplained, and preceded by a limitation of the legal freehold to the ancestor, in the same will, had ever been construed words of purchase.

F. 155

And judgment, in the case of *Perrin and Blake*, was afterwards reversed.

F. 158

And see also *Blandford v. Aplin*, 4 T. R. 82. *Candler v. Smith*, 7 T. R. 531. *Cock v. Cooper*, 1 East, 229. and *Pierson v. Vickers*, 5 East, 547.

B. 203

However, it seems, that if the limitation be to the *heir male*, or *heir of the body*, in the sin-

gular number, there, although the words of inheritance engrafted thereon *be consistent* with the nature of descent first pointed out, yet the word heir, &c. has been deemed a word of purchase. See *Cheek or Clerke v. Day*, Moor, 593. and *Archer's case*, 1 Rep. 66.

F. 150

But, if there be no such words of limitation engrafted on the devise to the heir, &c. although in the singular number, yet the rule will nevertheless take effect. *Burley's case*, 1 Vent. 230. *Welkins v. Whiting*, 1 Bulst. 219. *Richards v. Lady Bergavenny*, 2 Vern. 324. *Miller v. Seagrave*, Rob. Gavelk. 96. and *Trollop v. Trollop*, Amb. 453. Unless the limitation to the heir, &c. be for life, as in *White v. Collins*, Com. Rep. 289.

F. 178

It must however be remarked, that the word "issue" does not bend so easily to the rule as the word "heirs, &c."

B. 203

And the word "issue" in some instances, unattended with any engrafted words of limitation, has been held a word of purchase, when the heir in the singular number would not have been so.

F. 153

And also note the case of *Backhouse v. Wells*, 1 Eq. Ab. 184. pl. 27. where the limitation was to A. for life *only*, and after his decease to the issue male of his body, and the heirs male of such issue; and in which it was held, that the issue would take as purchasers.

F. 152

Sed vide *Dodson v. Grew*, *supra*.

But it is to be observed, that where, by the rule in *Shelley's case*, the subsequent limitation to the heirs, &c. vests in the ancestor, taking by the same conveyance, a preceding estate of free-

hold, yet the rule does not operate so absolutely to merge the particular estate as to destroy intervening contingent remainders; but the estates will open to admit the contingent estates when they arise.

F. 346

In cases of *devise*, much difference has prevailed in opinion, how far the apparent intention of the testator should control the rule; and Mr. Hargrave holds, that the rule is no medium for *discovering* the testator's intention, but, on the contrary, that the intention must be presumed already discovered, and to be a superadded succession to the heirs general or special of the donee, making him, the ancestor *terminus* or *stirps*, from which the whole generation or posterity of heirs is to be accounted; and that if such be not the apparent intention, the rule is extraneous matter; but if such be the apparent intention, the rule must be applied.

F. 186

F. 188

Lord Thurlow, in *Jones v. Morgan*, 1 Brown. C.C. 206. held, that if, after the limitation to the first taker, the estate is to go to *every* person who can claim as *heir* to the first taker, the word heirs must be a word of limitation, and that all heirs taking as heirs must take by descent; but that, where he could bring it to the point, that the testator meant first and other sons, he would alter the words of the will. He thought it, however, immaterial to consider, whether the testator intended, that the first taker should have an estate for life only,—he took it, that in all cases the testator meant so.

F. 194

F. 195

And it seems, that if the intention is once clear, that the succession shall go and be con-

fined to *all* the heirs of the tenant for life, the direction, that they shall take as purchasers, must be rejected for inconsistency.

F. 192

There seem in fact to be two discriminative lines in the rule, whose concurrence will decide its application: the one, that the person to claim the inheritance after the ancestor, is to claim as heir, &c. *eo nomine*, and under that description, whoever that person may be.

F. 197

The other, that the effect of the limitation is not confined to the person so claiming as heir, &c. or his representatives as such, of any description, but directed equally through all other persons successively answering the same relative description of heirship, general or special, to the ancestor referred to, and entitling them *eo nomine*, or in that character only.

F. 197

And it is to be lastly observed, that Mr. Butler, in his notes, 1 Co. Litt. 376 b. shews, that if, in a devise, the words "heirs of the body" should, after a preceding estate of freehold in the ancestor, be read as meaning first and other sons, or as vesting the inheritance in the first person who should answer the description of heir, &c. and confining the descent to his heirs (as a purchaser), the testator's intent would not in general be answered, and that a long series of adjudications will prevent the limitations being in such case considered as creating a QUASI ENTAIL (which see.) But that, if the intention of the testator be apparent, to limit the estate in either of the two first mentioned modes, no rule of law or equity will prevent that construction.

B. 190

SCINTILLA JURIS.

This doctrine has originated under the statute of uses, which enacts, that *where any person is seised to the use of others*, such other persons shall be deemed and adjudged in lawful seisin estate, and possession, &c. to all intents, &c. of and in such like estates as they had in use, &c. And it is admitted, that, to give effect to the statute, some person must be seised to the use of the person to whom the use is limited. B. 292
F. 301

The difficulty which arose in construing the operation of the statute, was in the necessity of finding a seisin in the feoffees, &c. to serve *contingent* uses when they arose. B. 292

And it was first suggested, that the legal estate or use remained in the feoffees, until the use arose. But this was answered by shewing, that the whole seisin was divested from the feoffees and executed in the vested estate. B. 293

The doctrine which ultimately prevailed was this, that *there is no actual seisin remaining in the feoffees*, but only a *possibility* of seisin or *scintilla juris*, to take effect on the happening of the contingency on which the uses are limited; and that, if the uses are divested, this possibility will be divested also. *Chudleigh's case*, 1 Rep. 120. B. 293
F. 296

This possibility may, however, be revested either by the entry of some person entitled to a preceding vested estate of freehold, or by the feoffees themselves; and thereupon the contingent uses will be revested also. F. 295

Unless the feoffees by feoffment, release, or otherwise, bar their own right of entry, when it seems that not even the entry by a person in respect of a preceding estate of freehold will re-vest the seisin.

F. 295

Nor does it seem that the *cestuique use* will have a remedy other than as against the feoffees in a court of equity.

F. 295

For privity of estate is absolutely necessary to the standing seised to an use, and as the feoffees have no estate in them but what is executed by the statute, there can be no privity of estate in *their* feoffees. And see *Wegg v. Villiers*, 2 Roll. Ab. 796. pl. 11.

F. 296

Unless the feoffees are also trustees to preserve contingent remainders. *Mansel v. Mansel*, 2 Peere Wms. 678. And see FEOFFES TO USES.

And it must be remarked, that, according to this doctrine, an *actual* entry must be made to re-vest the estates, although in cases at common law a mere right of entry, without any actual entry at all, will support contingent remainders.

F. 298

But it should be observed, that this doctrine of *scintilla juris* should be received in practice with much caution in the present day.

F. 293

The case of *Wegg v. Villiers*, *supra*, in which the doctrine was laid down, did not call for an adjudication of the point, as an actual entry was made by a person having a right of entry in respect of preceding estate of freehold.

F. 300

And it may be urged in opposition to the prevailing doctrine before stated, that as the statute declared, that the *cestuis que use* should be adjudged in lawful seisin, &c. of the lands as they

had in the use, &c. the seisin is completely divested out of the feoffees at the time of the conveyance; and that when the contingent uses arise, the use is executed in the person to whom it is limited, not in consequence of any seisin *then* in the feoffees, but by reason of the feoffees having been *originally* seized to *all* the uses, present, future, vested, or contingent.

B. 295

And it may be further asked, why, as the statute intended to clothe the use with the legal seisin, and to give it the like capacities as an estate at common law, and as one of the qualities of a contingent estate at common law, is a capacity of being supported by a right of entry merely without an actual entry, a contingent use should not acquire a like capacity.

F. 301

SCOTCH LAW OF ENTAIL.

Under the Scotch law, there are three several kinds of entail, viz.

- 1st. A tailzee of simple destinations.
- 2nd. A tailzee with prohibitory clauses; and,
- 3rd. A tailzee with irritant and resolute clauses.

The first is a limitation in a particular line of devolution, subject to alienation in each successive possessor.

The second is a like limitation, which may be disposed of or charged for a valuable consideration, and may be attached by creditors, unless the remainder-men secure themselves by an *inhibition* against future debts or contracts.

And the last is a strict entail, which cannot be opened.

B. 568

SEISIN.

In a conveyance to uses, there is no actual seisin left in the feoffees; but the whole seisin is immediately transferred to the vested uses. But under the present doctrine of SCINTILLA JURIS (which see), there is a *possibility* of seisin in the feoffees to serve the contingent uses, when they arise. *Chudleigh's case*, 1 Rep. 120.

F. 290

SETTLEMENT.

Where there is a settlement without articles, the words will be left to their legal operation, unless a mistake in the wording of the limitations be satisfactorily made out by legal evidence. *Doran v. Ross*, 1 Ves. Jun. 170.

B. 114

Nor will the court, in the case of a settlement without articles, decree that a limitation, which would otherwise give an estate tail, shall be construed in strict settlement. Lord Hardwicke in *Warwick v. Warwick*, 3 Atk. 291.

F. 109

And if there be articles, and a settlement be executed before marriage differing from the articles, and not purporting to be in pursuance of them, the court will not interfere.

F. 107

And in the case of a *defective* settlement, the court will not alter or vary the uses, as it will do in the case of articles; but will merely supply the defect. *White v. Thornborough*, 2 Vern. 702.

F. 110

If the wife's personalty be vested in trustees previously to marriage, in trust for the husband

for life, and if he fail, then to be applied for the separate maintenance of the wife and children, the provision for the wife's maintenance will be good against creditors. *Lockyer v. Savage*, 2 Stra. 947.

B. 250

But it should seem, that in such case the benefit must be for the person from whom the property moved.

B. 250

And if household furniture be *bond fide* settled before marriage, it will not, even if the settlor be *then* insolvent and continue in the use and possession of it, be left to a jury to determine, whether the settlement was fraudulent or not. *Cadogan v. Kennett*, Cowp. 432. And see *Foley v. Burnell*, Cowp. 435. note.

F. 408

Where in a settlement a shifting clause is introduced, to make lands go over on the accession of a family estate, a limitation to trustees and their heirs to take effect on the cesser of the estate, and to continue during the suspense of the next immediate remainders, should be introduced.

B. 223

And where a monied fund is settled on husband and wife successively for their lives, and then to the children, power should be given to the trustees, with the consent of the parents during their joint lives, to pay or transfer to any child acquiring a vested interest in the trust fund, any part of his or her share.

B. 559

And see ARTICLES—CHATTELS—PERSONAL ESTATE.

SHIFTING CLAUSE.

Where a shifting clause is introduced in a settlement for making an estate go over on the happening of a given event, great care should be taken, that it be accurately worded; for if the proviso be, that the estate tail shall cease, *as if the tenant in tail were dead*, this will be deemed repugnant, impossible, and against law. *Corbet's case*, 1 Rep. 83. b.

B. 953

And even if the proviso be, that the estate of the tenant in tail shall cease, *as if he were dead without issue*, this is not strictly accurate. For although it will apply to the first tenant in tail, yet if he die leaving several children, the clause will be imperfect; the estate tail should, therefore, be made to cease, "as if the party becoming entitled were dead, and there were a general failure of issue inheritable under the entail created by the limitation to the first taker and the heirs of his body."

B. 254

And a limitation should also be introduced to trustees for preserving contingent remainders, as mentioned under article SETTLEMENT, (which see.)

SPECIAL OCCUPANT.

If a lease for lives be limited in strict settlement, a remainder-man will take as a special occupant. See LEASES FOR LIVES—OCCUPANCY.

F. 498

SUB MODO.

An estate executed *sub modo* is, where the inheritance is executed *in possession* for some purposes, but *not for all*.

F. 36

Thus, if an estate be limited to A. and B. for their lives, with remainder to the heirs of one of them; or to baron and feme, with remainder to the heirs of the body of the baron; or to two men, with remainder to the heirs of their two bodies, or of the body of one of them, the inheritance is so far executed in possession, that the remainder is not grantable away without the freehold, and the feoffment of the baron would be a discontinuance of the entail. But there will be no severance of the jointure of the freehold during the joint lives, and consequently the wife will not be entitled to dower; nor will a recovery against the baron with single voucher bar the issue or remainder-men.

F. 36

And see *Merrel v. Rumsey*, 1 Keble, 888.

F. 31

If a particular estate, with contingent remainders over, be limited by the same deed, with such a reversion or remainder to the first taker as to drown his particular estate, the last limitation is only executed *sub modo*, and will let in the contingent estates as they arise.

F. 346

SURRENDER.

If legal tenant for life of freeholds surrender to the next vested remainder-man or reversioner,

the intermediate contingent remainders will be barred. *Thompson v. Leach*, 2 Vent. 198. F. 318

But the surrender by tenant for life of copyholds will not destroy contingent remainders, for the freehold remains in the lord. F. 319

And see CESTUI QUE TRUST.

TENANT FOR LIFE.

If tenant for life destroy contingent remainders limited on his estate, yet, as he is no trustee, equity will not interfere. *Mansel v. Mansel*, 2 Peere Wms. 678. F. 329

But it is doubtful, whether a court of equity will compel a purchaser to accept a title depending on the destruction of contingent remainders. See *Roach v. Kidd*, 5 Ves. Jun. 546. B. 329

Equitable tenant for life cannot, by feoffment or other conveyance, commit a forfeiture, or destroy contingent remainders. *Penhay v. Hurrell*, 2 Freeman, 213. F. 321

Nor will the lease and release of legal tenant for life destroy contingent remainders limited on his estate. F. 322

Unless executed to the next vested remainder-man, or reversioner. B. 322

Or unless the next vested remainder-man or reversioner concur therein.

TENANT TO THE PRÆCIPE.

If lands be limited to trustees and their heirs upon trust, to pay the rent to a feme covert during her life, for her separate use, with a re-

mainder to another person in tail, the baron and feme may, by lease and release and fine, make a tenant to the præcipe in an equitable recovery. *Fearne's Posthuma*, 330.

B. 56

If a person be entitled to an estate tail, under an executory devise, and the freehold has in the meantime descended on the heir at law of the testator, (as to A. for six months, and then to B. in tail,) the concurrence of the heir at law in making a tenant to the præcipe is absolutely requisite.

B. 537

TERM FOR YEARS.

If a term for years be bequeathed to one for a day or an hour, with an executory bequest over, which proves to be void, the first taker will have the whole term, if it be the testator's intent to dispose of the whole from his executors.

F. 438

But if such intention in a bequest do not appear, there will be a possibility of reverter in the executors; as in the instance of a devise of a term to several persons successively for their lives only.

F. 438

A distinction was taken by Lord Coke, in *Leonard Lovie's* case, 10 Rep. 78. between a bequest of a term in gross and of a term *de novo*, in this respect, that although if in the first case the term be limited to a man and the heirs of his body, it will go to his executors or administrators, and not revert on failure of issue; yet that, in the latter case, the term will cease on failure of issue.

F. 461

And this distinction was relied upon in the

arguments of the counsel for the plaintiff, in the case of *Hayter v. Rod*, 1 Peere Wms. 362; but it did not prevail.

F. 461

And Lord Keeper Finch, in the case of *Burgis v. Burgis*, 1 Mod. 115. and Lord Nottingham, in the *Duke of Norfolk's* case, 3 Cas. in Ch. 30. denied the distinction.

F. 462

And it should be observed, that, in all cases, an executory bequest of a term, and a limitation of the trusts of a term, are governed by the same rules. See *Lamb v. Archer*, 1 Salk. 225. *Fletcher's* case, 1 Eq. Ab. 193. *Thrustout v. Denny*, 1 Wils. 270.

F. 470

Nor is there any difference between a limitation of the term itself, and of the lands, profits, use, or occupation, during the term. And see

F. 422

Wright v. Cartwright, 1 Burr. 282.

F. 423

And although an executory devise of a chattel limited to take effect on a general dying without issue be void for remoteness, yet if a term of years *de novo* be limited to take effect after a general dying without issue, which has reference to the determination of a preceding limitation in tail, (as where lands were limited to A. for life, with remainder to his first and other sons in tail male, and *if A. should die without issue male*, then to trustees for a term of years in trust to raise portions for daughters, *Goodwin v. Clerk*, Lev. 35.) the term for years will take effect.

F. 476

And that; although there be issue living at the time at the decease of the party, in the event of whose dying without issue the term was li-

mitted to commence, if such issue afterwards die without issue.

F. 476

But it seems, that if a term of years be limited, by a distinct deed, to take effect on the decease of I. L. without issue, then if I. L. die, leaving issue, and such issue afterwards die without issue, the term will not take effect; for this would be creating a perpetuity, as a common recovery will not bar the lease.

Appendix
B. 611

Although it is a general rule of law, that if a chattel be bequeathed to a person by such words as would give him an estate tail, expressly or by implication, in lands of inheritance, he shall take the whole term; yet, perhaps, a distinction may be taken between the cases where a term is bequeathed *for life expressly*, and if the devisee die without issue, then over, and an *indefinite* bequest to one, and if he die without issue, then over; on the ground, that in the former case, the term may be presumed to result to the executors. *Clare v. Clare*, Cas. Temp. Talb. 21.

F. 479

F. 480

F. 487

And it seems, by the above case, that if a term be devised in trust for A. for so many years as he shall live, and after his decease in trust for his issue male lawfully begotten, for so many years of the unexpired term *as such issue male shall live*, with remainder over, A. will have an estate for life only. *Clare v. Clare*, supra.

F. 487

And it should be observed, that, in the two several cases of *Peacock v. Spooner*, 2 Vern. 43. and *Dafforne v. Goodman*, 2 Vern. 362. (being cases of *marriage settlement*,) where the trusts of a term were declared to be for A. *during so many years of the term as he should live*, and af-

ter his decease, for the heirs of his body, it was determined, that A. took an estate for life only. F. 493

But those two cases seem to have been overruled by the case of *Webb v. Webb*, 1 Peers Wms. 132. where the trusts of the settlement were for A. *for life*, with remainder to the heirs of his body, and in which it was held, that A. took the whole interest; and this has been the governing case ever since, or at most the two former cases are attended to only in instances *exactly similar in specie*. F. 493

And lastly, although in every case of a limitation of freeholds to a person for a term of years, if he shall so long live, with remainder over to another on his decease, the remainder seems to be contingent, as the termor may outlive the term, yet where the term is so long as to make it beyond calculation that the party should outlive it, the remainder is vested; and thus, in *Weale v. Lower*, Pollexf. 67. a term for 99 years was stated to be sufficient for this purpose. F. 22

And in the cases of *Napper v. Sanders*, Hutt. 119. and *Lord Derby*, Lit. Rep. 370. a term for 80 years was deemed sufficient for the purpose. F. 21

But in the case of *Beverley v. Beverley*, 2 Vern. 131. a term of 60 years was not held sufficiently long to have that effect. F. 22

And see CHATELS—CONTINGENT REMAINDERS—EXECUTORY DEVISE—VESTED REMAINDER.

THELLUSSON'S CASE.

See *Thellusson v. Woodford*, 4 Ves. Jun. 227.
and 11 Vesey, Jun. 112.

The objections raised to the validity of the trusts for accumulation in this cause were eight. B. 436

1st. That the will was morally vicious, and politically mischievous, as creating a fund, the revenue of which would be greater than the civil list. B. 437

2ndly. That it was a fraud on the rule, which then permitted an accumulation of property during the suspense of a life or lives in being and 21 years afterwards, allowing a few months for gestation. B. 438

3rdly. That the trusts were not confined within the boundary which the law prescribed for trusts of such a description; as most of the lives, which served for the term of the accumulation, had no intimate connection with, and did not immediately lead to the persons benefited. F. 439

4thly. That there was a double allowance for gestation; and that, not for the benefit of the persons coming into existence during the period, nor confined to one person only, as in *Long v. Blackall*, 7 T. R. 100. 3 Ves. Jun. 386. B. 440

5thly. That children *en ventre sa mere* have no legal existence, but for their own benefit. B. 440

6thly. That the several lines of issue, during whose lives the accumulation was to take place, did not appear to be confined to issue born in the lifetime of the testator. B. 440

7thly. That there was an accumulation di-

rected *until purchases should be made*, which might not happen until a considerable time after the expiration of the surviving life. B. 441

And 8thly. That the beneficial trusts ought to be rejected for uncertainty. B. 441

Judgment was, however, given by the chancellor in favour of the will, which was confirmed on an appeal to the House of Lords. B. 442

This cause gave rise to the act of the 39 & 40 of the present king for restraining all accumulations beyond the time therein mentioned. See ACCUMULATION. B. 443

TIMBER.

If tenant for life in possession cut timber upon the land, the first remainder-man, having a vested estate of *inheritance*, will be entitled to the benefit, notwithstanding there are intermediate contingent estates. *Uvedale v. Uvedale*, 2 Roll. Ab. 111. F. 224

But the Court of Chancery will interpose to prevent collusion. *Garth v. Cotton*, 1 Ves. 524. F. 224

And will also interfere, if the tenant for life has himself the next vested estate of inheritance. *Williams v. the Duke of Bolton*, 2 Peere Wms. 269. F. 224

TITLE.

If the title to lands be doubtful, the Court of Chancery will not compel a purchaser to take it. *Shapland v. Smith*, 1 Brown's C. C. 75. F. 57

But it is doubtful whether, if a title be depend-

ing on the destruction of contingent remainders, the court will compel a purchaser to accept it or not.

And see NOTICE.

TRUSTEES.

If the purposes of the trust in a devise, require that trustees should take the fee, they will have it without words of limitation. 1 Ves. 491. 3 Burr. 1686. F.304n.

And if lands be devised to trustees and their heirs for a special purpose only, as to pay an annuity to A. during his life, *Chapman v. Blissett*, Ca. Temp. Talb. 145. yet if the estate of the trustees be necessary for the support of subsequent contingent remainders, the court will not hold the estate of the trustees confined to the duration of their specific trusts, but will deem them trustees also for such further purposes. F. 304

If lands be limited to trustees and their heirs *during minority*, they will take a life estate. B. 226

But if the limitation to them be *until A.* attain 21, they will have a fee determinable. B. 226

In the case of *Vick v. Edwards*, 3 Peere Wms. 372. where lands were devised to two trustees and the survivor of them, and the heirs of such survivor *upon trust to sell*, Lord Talbot held, that the fee was in contingency, and a fine necessary to pass the contingent interest by estoppel. F. 356

But it seems, that, as a bare devise to trustees *upon trust to sell*, without any words of inheritance, would have given a joint fee, and as

the above devise to the survivor and his heirs, did no more in effect than what is comprised in a devise to trustees and their heirs, the operation of the devise in giving a contingent fee, and the necessity of a fine, may at least be deemed problematical.

F. 357

See CONTINGENCY.

But there can be no doubt that the conveyance of the trustees, without fine, would at all events pass the *equitable* fee.

B. 358

It should, however, be remarked, than an *indefinite* devise to trustees to *pay debts* will give a chattel interest only.

F. 127

If personal property be vested in trustees and settled, any one interested or entitled under the trusts may go into the court of Chancery to compel the trustees to assert their legal rights.

Foley v. Foley, 1 Brown's C. C. 274.

F. 412

If a trustee himself be entitled to the use of a specific chattel during his life, the equitable rights of those ultimately entitled will bind the legal.

F. 412

Although an executory devise to take effect after a general failure of issue be void for remoteness, yet it seems that a devise by a testator, (in default of issue male and female of his own body,) to trustees for the payment of debts and legacies, will hold good, as signifying a failure of issue living at the time of the testator's decease. *French v. Caddells*, Brown's Ca. in Parl. 6 vol. 58.

F. 450

In the case of *Lade v. Halford*, 3 Burr. 1416, a proviso, that so long as any tenant for life, or in tail male, should be under 25, the trustees

should enter and receive the rents, and thereout maintain the tenant in possession, and accumulate the residue, was held void. F. 530.

And it seems, that the real objection arose from the fact of the dry accumulation of rents directed for *26 years*; and not from the nature of the proviso itself, which is good if confined within the rules prescribed by law for the accumulation of rents. See *Gale v. Gale*, 2 Ves. Jun. 220. B. 532

TRUSTEES TO PRESERVE CONTINGENT REMAINDERS.

The legal subjection of contingent remainders to the power of the tenant of the preceding particular estate of freehold on which they depend, has occasioned the resort to estates to preserve contingent remainders. F. 325

The practice is supposed to have been introduced during the civil wars; and it is that, of limiting the use or legal estate, from and after the determination of the estate of the tenant for life, by forfeiture or otherwise, in his lifetime, to some trustees, &c. during his life, in trust, to preserve the contingent remainders expectant on his decease from being destroyed, and subject thereto in trust for himself. F. 326

But it need not be confined to the life of the tenant for life of the land, provided it be restrained to the life of a person in being. *Hopkins v. Hopkins*, 1 Atk. 596. F. 326

And it is a good *vested* remainder in the trustees, *Dormer v. Parkhurst*, Vin. vol. 18. fol. 413. F. 220

And this right of entry will support the contingent remainders. F. 326

The trustees, however, although properly appointed only to preserve contingent remainders, are in effect trustees as well for all the vested as for the contingent remainders. The master of the rolls in *Barnard v. Large*, 2 Peere Wms. 684. n. F. 335

But the utility of this limitation applies to legal estates only. F. 304

If it be intended to limit a legal estate to A. for life, with remainder to his first and other sons in tail male, with remainder to the sons of B. in tail male, without giving any preceding estate of freehold to B. himself, with remainder to C. in fee, there should be introduced a limitation to trustees to preserve, &c. as well during the lifetime of A. as also during such time as the remainder to the sons of B. shall be in suspense. B. 222

And if in a settlement of lands, a clause be introduced for making the settled estate go over on the descent of the family estate, a limitation to trustees to preserve, &c. should be introduced to take effect during the suspense of the vesting of the next immediate remainder. B. 358

In the case of a trust executory, as of money to be laid out in the purchase of lands directed to be conveyed and settled to uses, the Court of Chancery will supply a trust estate for preserving contingent remainders. *Baskerville v. Baskerville*, 2 Atk. 281. F. 139

And thus also in the case of *Stamford v. Hobart*, Brown's C. C. 288. the chancellor inserted a limitation to that effect, although not expressed

or directed by the words of the will or the act of parliament establishing it. F. 338

And where, in a will, a trust for preserving contingent remainders was misplaced, viz. where it was placed *after* the contingent estates, the court rectified the error. *Green v. Hayman*, 2 Cas. Canc. 10. F. 337

And these have been cases of limitations in wills, where all claim as *volunteers*. F. 338

But in cases of articles, settlements, &c. for good and valuable considerations, the court has gone as great or greater lengths in transposing clauses, or supplying words, &c. to effectuate the intent of the parties. See *Uvedale v. Halfpenny*, 2 Peere Wms. 151. F. 338

And if the trustees concur in destroying the remainders, a court of equity will deem it a breach of trust, and in most instances decree the trustees to purchase lands of equal value out of their own monies. *Mansel v. Mansel*, 2 Peere Wms. 678. F. 327

And if their alienee take without consideration, or with notice, he will hold subject to the trusts. F. 327

There are some instances, however, in which the court has refused to punish trustees for concurring in a conveyance to destroy contingent remainders: F. 329

As where there has been a contingent remainder to right heirs after limitations to the issue of the marriage, all of which have failed, and a collateral relation only has been affected by the destruction. *Sir Thomas Tippen's case*, 1 Peere Wms. 359. F. 330

And, as in the case of a contingent limitation to the heirs of the body of A. who afterwards had two sons, and the trustees, in the lifetime of A. on the eldest son's attaining 21, concurred in making a feoffment and levying a fine. The eldest son afterwards died without issue, and the second son, *in the lifetime of A.* brought his bill against the trustees. *Else v. Osborne*, 1 Peere Wms. 387.

F. 330

And in some instances the court has even *directed* the trustees to concur: as,

1st. Where lands, *already in mortgage*, were settled, on the marriage of A. to the use of himself for life, with remainder to his wife for life, with remainder to the sons of the marriage in tail, with the reversion to A. in fee, and there was no great probability of issue, and the mortgagee threatened to enter. *Platt v. Sprigg*, 2 Vern. 303.

F. 331

2dly. In the case of a *voluntary settlement*, where a bill was filed by the *creditors* of the settlor, although the debts were contracted subsequently to the settlement. *Bassett v. Clapman*, 1 Peere Wms. 358.

And 3dly. Where the *immediate freehold* was vested in the trustees and their heirs, during the life of the settlor, with remainder to first and other sons in tail male, and the eldest son, when of age, *in contemplation of marriage*, was desirous of suffering a recovery, and re-settling the estates. *Frewin v. Charleton*, 1 Eq. Ab. 386. pl. 4. *Winnington v. Foley*, 1 Peere Wms. 536.

F. 332

But it seems, that, unless in the case of an antecedent mortgage, or voluntary settlement, the

court will not direct the trustees to concur, for the purpose of satisfying incumbrances, let the improbability of issue be ever so great. *Davies v. Weld*, 1 Vern. 181.

F. 333

Nor, except in the prospect of the marriage of the eldest son, and the resettlement of the estate, will the court direct the trustees of the freehold to concur with the tenant in tail in remainder, in making a tenant to the præcipe in a common recovery, unless the other issue of the marriage entitled under the limitations will assent thereto. *Townsend v. Lawton*, 2 Peere Wms. 379. *Symance v. Tattam*, 1 Atk. 613.

F. 334

And that; not even if the recovery be intended for the payment and satisfaction of debts. *Woodhouse v. Hoskins*, 3 Atk. 22.

F. 334

And in the case of a will, where all the parties are volunteers, the interest of the remotest remainder-man will be considered. *Barnard v. Large*, 2 Peere Wms. 684 n.

In cases of *settlement*, however, even *vested* remainders to remote relations, not the immediate objects of the parties, or standing in opposition to the first tenant in tail desiring a reasonable settlement, have never been much considered.

F. 335

But, although the court may not choose to *compel* trustees to concur in destroying contingent remainders, yet the court may not, in every such instance, *condemn* the trustees for assenting thereto.

F. 336

The safest way, however, seems to be, not to act, *except in the clearest cases*, without the direction of the court.

F. 336

But it must be observed, that *general* trustees

may safely concur with the tenant in tail in making a tenant to the præcipe in a common recovery, as this will be no breach of trust. F. 333

The interposition of trustees to preserve contingent remainders between the estate of freehold in the ancestor, and a limitation to his heirs, &c. will not prevent the union of the estates under the rule in *Shelley's case*. *Colson v. Colson*, 2 Stra. 1125. F. 161

Except in the instance of TRUSTS EXECUTORY (which see.)

And it may be lastly remarked, that a limitation, in a *covenant to stand seized*, to a stranger, in trust to support contingent remainders, will not be valid. 2 Lev. 54. F. 326

And see CONTINGENT REMAINDERS—TRUSTEES.

TRUSTS.

The law of trusts is founded on the law of contract, and consequently has no reference to the law of tenure, on which the common law is founded. B. 537

The courts of equity, however, in the construction of trust estates, are desirous, as far as possible, of rendering their determinations analogous to the construction of like estates at law, *nam æquitas sequitur legem*.

And it is in cases of *imperfect trusts only*, that the Court of Chancery will, in the limitation of estates, make a different construction from a court of law. *Austen v. Taylor*, Amb. 376. F. 134

And see TRUSTS EXECUTED AND EXECUTORY.

If lands be limited to trustees and their heirs in trust, to pay the rents to a feme covert during her life, for her separate use, and after her decease in trust for some other person in tail, the husband and wife may, by lease and release and fine, make a tenant to the præcipe in an equitable discovery. *Fearne's Posthuma*, 330. B. 56

And if the subsequent trust be to the heirs of her own body, the estates will coalesce under the RULE IN SHELLEY'S CASE (which see.) F. 56

Nor is a trust estate tail inconsistent with a trust for her separate use; nor is the separate trust merged or absorbed in the trust of the inheritance. *Pitt v. Jackson*, 2 Brown's C. C. 51. F. 57

In the case of *Davison v. Foley*, 2 Brown's C. C. 203. an annuity was secured in trust for two persons, so as in fact not to be attachable by the creditors of the *cestuis que* trust. See B. 250 ANNUITY.

If a prior trust be void for remoteness, all the subsequent trusts will be void also. *Cambridge v. Rous*, 8 Ves. Jun. 12. B. 510

In the case, however, of a conveyance to the use of A. for life, and after his decease to the use of trustees and their heirs in trust, to apply the rents in manner therein mentioned, until some son of B. *should attain 25*, and to convey the estate to the use of the first son attaining that age in tail male, and for default of such issue to the uses therein mentioned. Mr. *Fearne* inclined to think, that although the trust to the son of B. (he then having none) was void

for remoteness, yet the subsequent limitations might be considered as not dependent on the contingency of a son of B. attaining 25, but as taking *immediate effect, subject* to the contingency, and therefore good. *Fearne's Posthuma*, 283.

B. 500

A trust of personal estate to one in tail, will vest the whole property in him. *Seale v. Seale*, 1 Peere Wms. 290.

F. 463

And that; although the *interest* of a sum of money, as in *Butterfield v. Butterfield*, 1 Ves. 133. or the *dividends* of stock, as in *Daw v. Pitt*, at the Rolls, 1766, only, be given to the first taker for life, and after his decease the principal to the heirs of his body; for a bequest of interest or dividends resembles a devise of the rents of lands, which is a devise of the lands themselves.

F. 466

And see CHATTELS—ESTATE TAIL—EXECUTORY DEVISE. Sed vide TERM FOR YEARS.

Cestui que trust for life of real estate, cannot, by feoffment or other conveyance, commit a forfeiture or destroy contingent remainders limited on his estate.

F. 321

Nor will the Court of Chancery execute an estate in law, to enable tenant for life of a trust estate to destroy contingent remainders.

F. 321

Equitable tenant *in tail* may, however, by common recovery, bar all remainders and limitations over.

F. 321.

Nor can the limitations of trust estates of any description be carried to a greater length, or go further towards a perpetuity, than the limitations of legal estates.

F. 140

TRUSTS EXECUTED AND EXECUTORY,

In matters executory, as in cases of *articles*, or a will *directing a conveyance*, where the words of the articles or will are improper or informal, the Court of Chancery will not direct a conveyance according to such improper or informal expressions, but will order a conveyance or settlement to be made in a proper and legal manner, so as best to answer the intention of the parties. Per Lord Cowper, in *Stamford v. Hobart*, 1 Brown's Parl. Cas. 288.

F. 119

But, however, it is in cases of *imperfect trusts only*, that the court can make a different construction from a legal limitation, *Austen v. Taylor*, Amb. 376.

F. 133

And it would be very dangerous if the court should do otherwise. Per Lord Keeper Henley, in *Wright v. Pearson*, Amb. 358.

F. 128

Thus, where lands were devised to trustees and their heirs, for payment of debts and legacies, and afterwards to settle what should remain to the use of A. and the heirs of his body, special care being taken in the settlement *that it should not be in A.'s power to dock the entail*. *Leonard v. the Earl of Sussex*, 2 Vern. 526.

F. 114

And thus, where lands were devised to trustees and their heirs in trust, *to convey* the estate to A. for life, *without impeachment of waste*, remainder to the issue of her body. *Glenorchy v. Bosville*, Cas. Temp. Talb. 3.

F. 116

The court directed a settlement on the parents

for life, with remainder to their issue in strict settlement as purchasers.

And in the case of *Stamford v. Hobart*, 1 Brown's Parl. C. 288. which was that of a devise of lands to trustees and their heirs in trust, *to convey* and settle to the use of A. for life, with remainder to the sons of A. for 99 years, with remainder to the heirs male of the body of every such son. The court inserted a limitation to trustees to preserve contingent remainders, although the will had been confirmed by an act of parliament, which enacted, that the estate should be held and enjoyed by such persons, &c. and in such manner, &c. as by the will was declared. F. 118

But where lands were devised to trustees and their heirs for payment of debts and legacies, and afterwards *to be and remain* in trust for A. for life, with power of leasing, with remainder to the heirs male of his body, with remainder over. *Baile v. Coleman*, 2 Vern. 670. F. 124

And where lands were devised to a trustee *in trust, to pay* the rents to A. for her separate use for her life, and after her decease to pay the same to B. for his life, and afterwards to pay the same to the heirs of his body, and for the want of such issue then over. *Garth v. Baldwin*, 2 Ves. 646. F. 125

And where lands were devised to trustees and their heirs upon trust, out of the rents, to raise a certain sum of money and interest, and subject thereto *in trust for A.* for life, with remainder to the *trustees* and their heirs *to preserve* contingent remainders, with remainder to the heirs male of the body of A: provided, that if A. should

die, without issue male of his body living at his decease, then the lands to be charged with certain other sums of money; and, for default of such issue male of A. then to such of the testator's grandchildren as should be living at the time of the failure of such issue male of A. as tenants in common in fee. *Wright v. Pearson*, Amb. 358. F. 126

And where lands were devised to trustees and their heirs in trust, for the payment of certain annuities, and subject thereto, *in trust for A.* for life, with remainder to *trustees to preserve*, &c. with remainder to the heirs of the body of A. *Austen v. Taylor*, Amb. 376. F. 133

And where lands were devised to trustees and their heirs in trust, for payment of debts, and subject thereto *in trust for A.* for life, *without impeachment of waste*, with powers of leasing, making jointures, and raising portions, with remainder to the heirs male of the body of A. severally, successively, and in remainder, the one after the other, as they and every of them should be in seniority of age, and priority of birth, with remainders over. *Jones v. Morgan*, 1 Brown's C. C. 206. E. 134

The court determined, that the limitation to the heirs of the body, coalesced with the preceding estate of equitable freehold in the ancestor.

And in the above-mentioned case of *Wright v. Pearson*, the court even transferred the intermediate proviso, and placed it after *all* the limitations, so as to connect the words, "in default of

such issue male," with the limitation to the heirs male of the body of A. and, to prevent their being confined by the proviso, to issue living at A.'s decease; and see also **MONEY TO BE LAID OUT IN LAND,**" and the several cases there cited. F. 127

In the case, however, of *Bagshaw v. Spencer*, 1 Ves. 142. where lands were devised in trust for A. for life, *without impeachment of waste*, with remainder to *trustees to preserve*, &c. with remainder to the heirs of the body of A. with remainder over, Lord Hardwicke held, that *all trusts*, in notion of law, were *executory*, and relying on the testator's intent being shewn by the clause without impeachment of waste, and the limitation to the trustees to preserve, &c. declared that A. had an estate for life only. F. 121

But see Exell v. Wallace, 2 Ves. 323. and the explanation there given by Lord Hardwicke of his opinion in *Bagshaw v. Spencer*.

And it should also be observed, that in the case of *Allgood v. Withers*, 2 Burr. 1107. where lands were devised to trustees and their heirs in trust, to apply the rents to A. for life, and after her decease to the heirs of the body of A. B. and C. and their heirs, Lord Talbot held; that A. had an estate for life only; but here the limitation to the heirs of A. was blended with those to others, who could only take as purchasers. F. 120

VENTRE SA MERE.

Although it is a rule, that some particular estate, or right of entry in respect thereof, shall

enure until the vesting of subsequent contingent remainders, or shall determine *eo instante* that the remainder vests, or else the contingent remainders will never arise, yet in the case of a child *en ventre sa mere*, at the decease of his father, who would have been entitled to a vested estate if his father had lived to the time of his birth, the child shall nevertheless be entitled as if he had been born in his father's lifetime. *Reeve v. Long*, 1 Salk. 227. and see 10 and 11 Wm. cap. 16. and see also article POSTHUMOUS CHILD, and the doubt there mentioned.

F. 309

And also, although it is a rule that every executory devise shall vest within the period of a life or lives in being and 21 years afterwards, yet a reasonable time of gestation is allowed. And, in the case of *Long v. Blackall*, 7 T. R. 100. a double time for gestation was permitted.

B. 434

Doubts were formerly entertained, whether, if an executory devise were limited to a person not in esse, *as if* in present existence, and the commencement of the estate devised were not expressly deferred to a future period, the devisee must not be capable of taking at the death of the devisor, or else the devise would be void.

F. 532

On this ground, it was disputed, that a devise to an infant *en ventre sa mere*, was not good. *Snow v. Cutler*, 1 Lev. 135.

F. 533

And it was said, that the devise to the infant should be "*when he should be born.*"

F. 533

At the present day, however, a devise to an infant *en ventre sa mere*, is certainly good, though he be born after the testator's death, and he will take by way of executory devise. 1 Freem. 244.

F. 535

Unless there be a preceding estate of freehold, when he will take by way of contingent remainder. *Gulliver v. Wicket*, 1 Wils. 105.; and see **VERBA IN PRESENTI.**

F. 535

VERBA IN PRESENTI.

It was formerly held, that if an executory devise were *per verba de presenti*, that is, if the devisee were mentioned as a person in present existence, and the commencement of the estate devised were not expressly deferred to a future period, there the devisee must be capable of taking at the death of the devisor, or the devise would be void.

F. 532

And thus, that a devise to the right heirs of J. S. should be limited "after the death of J. S." And a devise to the first son of A. (having none at the time,) should be "when he shall have one."

F. 533

But it may be considered, that, at the present day, there is no force in the distinction between *verba in presenti* and *verba de futuro*, unless in cases where there is not the least circumstance from which to collect the testator's contemplation or intention of any thing else than an immediate devise, to take effect *in presenti*. And see *Chapman v. Blisset*, Cas. Temp. Talb. 145. *Doe v. Carleton*, 1 Wils. 225. and *Harris v. Barnes*, 4 Burr. 2157.

F. 537

Sed vide *Snow v. Cutler*, 1 Lev. 135. *Goodright v. Cornish*, 1 Salk. 226. *Scatterwood v. Edge*, 1 Salk. 229. *Moore v. Parker*, 1 Ld. Ray. 37. and *Goodman v. Goodright*, 2 Burr. 873.

And see **VENTRE SA MERE.**

VESTED REMAINDER.

It is not the *uncertainty* of a remainder ever taking effect *in possession*, that will prevent its being considered a vested remainder, but rather its incapacity of taking effect, supposing the possession then to become vacant.

F. 216

And it may be generally remarked, that where-ever the preceding estate is limited, so as to determine on an event which certainly must happen, and the remainder is so limited to a person in esse and ascertained, that the preceding estate may by any means determine before the expiration of the estate limited in remainder, such remainder is vested.

F. 217

And in the case of lands being limited for a *long* term of years, to a person in esse, if he shall so long live, and *after his decease* to another person also in esse, here, on account of the improbability of the life exceeding the term, the remainder will be vested. See TERM FOR YEARS.

F. 21

And if lands be devised to the testator's wife for her life, if she so long continue his widow, and if she marry, then over, the remainder will be vested, to take effect either on her death or second marriage. *Luxford v. Cheeke*, 3 Lev. 125. *Lady Ann Fry's case*, 1 Vent. 203.

B. 7

And it may also be remarked, that a remainder is sometimes limited in words, which *seem* to import a *contingency*, though in fact they mean no more than would have been implied without

them, or do not amount to a condition *precedent*, but only denote the time when the remainder shall vest *in possession*. See CONDITION, CONTINGENCY, and the several cases there mentioned.

F. 242

And see also the case of *Colthirst* and *Bejuishin*, (article CONDITION,) and the distinction there mentioned, between a condition at common law, *abridging* a preceding estate, and a condition on the happening of which a remainder will vest *in interest*.

F. 263

After a limitation in fee, whether absolute or determinable, vested or contingent, no other limitation can be *vested*. *Loddington v. Kime*, 1 Salk. 224.

F. 225

Unless, perhaps, where a contingent determinable fee has been limited for some special purposes only, as in *Tracey v. Lethuellier*, 3 Atk. 774. where the devise was to trustees and their heirs, *until A. should attain 21*, upon certain trusts, and the testator devised the lands to A. after he should attain 21, for life, with remainders over.

F. 225

Nor will a preceding contingent remainder (*not being in fee*,) prevent a subsequent remainder to a person in esse from vesting.

F. 225

A contingency may in some instances be considered as so confined to the estate to which it is first annexed, as not to extend to the subsequent limitations, so as to prevent their vesting, as in the cases of *Napper v. Sanders*, Hutt. 111. *Tracey v. Lethuellier*, *supra*. *Bradford v. Foley*, Doug. Rep. 63. and *Horton v. Whitaker*, 1 T. R. 246.

F. 234

But this will depend on the *apparent* intent of the testator, or the contingency will affect the whole train of limitations. F. 236

And it should also be observed, that where subsequent limitations are limited on a conditional determination of a preceding estate, and such preceding estate never takes effect, yet the remainders will take place. *Scatterwood v. Edge*, 1 Salk. 229. F. 237

And further, that if a remainder has once vested by a good title, it seems it will not be defeated by the immediate suspension or destruction of the particular estate, by want of title in the grantor quoad that estate, or by the refusal of an infant on coming of age, as against whom the particular estate is voidable only, and not void; and that a vested remainder in a rent charge will be good, even in the case of a grant of the particular preceding estate to the terre tenant, in regard to whom the particular estate is not in existence. F. 308

And see CONTINGENT REMAINDERS—RENT CHARGE. F. 308

VESTING, TIME AND MODE OF.

By the time of vesting in executory devises of real estates is meant the vesting of the *freehold*. See EXECUTORY DEVISE. F. 431

As to the time when a contingent remainder shall vest, see CONTINGENT REMAINDERS.

Estates shall not be made to vest and cease and revest, as a proviso that, on the happening

of a certain event, the estate tail shall cease as if tenant in tail were dead. See **PROVISO—SHIFTING CLAUSE.**

F. 527

Except in the case of a **RENT OR COMMON** newly created, (which see.)

F. 528

Where an absolute property in lands is given, and a particular interest in the meantime is limited until the devisee comes of age, the particular interest operates only as an *exception* out of the devise, which is so made subject to it; and such limitation is not considered as a condition precedent to make the subsequent devise contingent upon the event of such devisee's coming of age, and so make it an executory devise; but is only taken as a description of the time when the devisee is to have possession, and the estate vests in him immediately, subject to such particular estate. See **CONDITION—CONSTRUCTION—CONTINGENCY—CONTINGENT REMAINDER—VESTED REMAINDER.**

F. 547

But this construction cannot be, if the devisee be not a person in esse, or where no present interest is devised in the mean time, or where there are express and operative words of condition, to suspend the vesting.

F. 548

When an estate vests on the birth of a daughter, under a limitation, in a settlement to the use of daughters as tenants in common in tail, the estate does not *cease* on the birth of another daughter, and vest in them both as tenants in common tail, but one moiety *remains* and the other moiety shifts.

B. 314

USES.

Uses under the statute are what trusts were at common law. F. 276

And Mr. Butler apprehends, that the statute of uses executes the possession in those persons *only*, who, if uses had continued in a fiduciary state at common law, would have been *cestuis que trust* of the land. B. 327

And therefore he submits, that, as at common law, if lands had been conveyed to A. and his heirs, in trust for B. and his heirs, and A. had *bargained and sold* to C. and his heirs, *with notice of the trust*, C. would not have been *cestui que trust*; so, since the statute, a bargain and sale by a trustee, to a person having notice of the trusts, will not make him *cestui que use*. B. 327

And that the consequence will be the same, if the conveyance be by *lease and release*, as the lease is merely a bargain and sale. But, nevertheless, the received interpretation of the statute is otherwise. B. 328

Doubts have been entertained, whether the statute will operate on estates not already in existence, such as a RENT DE NOVO, (which see.) B. 529

An use may be limited to cease, as to one person, upon a future event, and to vest in a stranger without entry or claim. F. 274

And when such an use arises on an event provided for by the deed or will creating the uses, it is called a **CONDITIONAL LIMITATION**, second-

dary, future, springing, or shifting use; when it arises from the act of some agent or person, whom the instrument authorises to raise or appoint, it is said to arise by an execution of a power.

B. 385

And although, at common law, a fee cannot be mounted upon a fee, yet by way of springing or shifting executory use it may be good.

F. 373

Shifting or secondary uses are subject to the same limits and restrictions as EXECUTORY DEVICES, (which see,) and in fact are, in deeds, what executory devises are in wills, and the same rules are applicable to both.

F. 441

F. 390

And though a remainder vest *in use* in several persons at different times, yet they may take jointly. *The Earl of Sussex v. Temple*, 1 Ld. Raymond, 310.

F. 313

Or as tenants in common. *Doe v. Perryn*, 3 T. R. 484. *Doe v. Marten*, 4 T. R. 39.

F. 313

And if I make a feoffment to the use of my wife, that shall be, and my first begotten son, for their lives, they will take jointly.

F. 315

A feoffment to the use of A. and his heirs, to commence four years from thence, is good as a springing use; and so is a limitation to uses after the decease of A. without issue, if A. die without issue within 20 years.

F. 390

But if lands be conveyed by A. to the use of himself for 99 years, remainder to B. for 25 years, remainder to the heirs of the body of A. the limitation to the heirs will not take effect either by way of remainder or springing use; not as a remainder, for want of a preceding estate of freehold to support it; not as a future use, as being without the reason of the cases

put by Holt, 12 Mod. 329. *Adams v. Savage*,
2 Salk. 679.

F. 284

And springing uses do not seem to have been
ever created in the middle of other uses.

F. 392

And it is a certain rule, that a limitation shall
never take effect as a springing use, where it
can possibly take place as a remainder.

F. 392

If a feoffment be made and fine levied to the
use and intent, that if a rent-charge be behind,
and there be no distress to be found, the grantee
may enter and take the rent, this will be good
as a springing use, and may be transferred or
assigned with the rent.

F. 523

It seems the king cannot stand seized to an
use.

F. 282

And if a bargainor to uses enter for a condi-
tion, he is in of the old use, and cannot stand
seized to any other. Moor, 761. Pl. 1054.

F. 278

A future use is descendible. 1 Rep. 99. a.

F. 364

And devisable. *Roe v. Jones*, Bl. Rep. 30.

F. 370

Where lands were limited to the use of the
settlor for life, with remainder to the use of his
intended wife for life, with remainder to the
heirs of the body of the settlor by his wife, re-
mainder to the settlor in fee, with a proviso, that
if he died and left issue behind him, without
making a provision for such child or children,
the releasees to uses should stand seized of one
moiety after his decease, to the use of such chil-
dren, and be empowered out of the rents to
make provision for them; it was held, that the
uses were to the husband for life, remainder as
to one moiety to the wife for life, remainder as
to the other moiety to the children during the

wife's life, if left unprovided for, remainder to the wife for life, remainder as to the whole to the heirs of the body of the husband. *Carwardine v. Carwardine*, in Chan. 28 June, 1758.

F. 383

See **CONDITIONAL LIMITATION—FEOFFEES TO USES.**

WASTE.

The Court of Chancery will not admit of waste by cutting of timber, through collusion between tenant for life in possession and the person next entitled to a vested estate of inheritance, to the prejudice to intervening contingent estates. *Garth v. Cotton*, 1 Ves. 524.

F. 224

And will even decree compensation.

F. 565

And will also protect the contingent remainders against the unreasonable waste of tenant for life, who is punishable for waste. *Dayrell v. Champness*, 1 Eq. Ab. 400.

F. 563

And will also interfere where the tenant for life is also seized of the next vested estate of inheritance. *William v. Bolton*, 3 Peere Wms. 268. n.

F. 224

And see *Robinson v. Litton*, 3 Atk. 209.

B. 562

Where, in the limitation of legal estates or of trusts *executed*, there is inserted a clause "*without impeachment of waste*," it will not prevent the operation of THE RULE IN *SHELLEY'S CASE*, (which see.)

F. 161

Unless, *perhaps*, in the case of a devise, where the subsequent limitation is to the *issue*, and not the *heirs*, &c.; as in *Loddington v. Kime*, 1 Salk. 224. where the devise was to A. for life

without impeachment of waste, and in case he should have any *issue* male, then to such issue male and their heirs for ever.

F. 225

And even in the case of articles before marriage, the clause does not seem to be material, if the limitation be to the "*heirs of the body*" after a limitation to the *issue male*, which has failed, and the *daughters be provided for* by the settlement. *Powell v. Price*, 2 Peere Wms. 535.

F. 101

WIDOWHOOD.

If, by a conveyance at common law, an estate be granted to A. (a widow) for life, with remainder to B. in fee, on condition that A. continue a widow; there if A. marry again, the entry of the grantor or his heir, for the condition broken, will defeat as well the estate to B. as to A. See

F. 262

CONDITION.

But if the limitation be to A. *durante viduitate*, with remainder to B. in fee, B. will be entitled on A.'s second marriage, on the principle, that A.'s life estate was in its origin made determinable on the happening of that event. See

F. 262

CONDITIONAL LIMITATION—PARTICULAR ESTATE—REMAINDER.

Dispositions, however, by *devise*, on the event of a second marriage, may be construed according to the apparent intent of the testator.

F. 262

Thus, where lands were devised to the testator's wife for life, if she should not marry again; but if she did, then the testator's son to enter and enjoy the premises to him and the heirs of his body, with remainder over. *Luxford v.*

Cheek, 3 Lev. 125. Here the widow died without marrying again, and it was held, that the son should take the estate in like manner as if the preceding estate had been limited *durante viduitate*. And see *Lady Ann Fry's case*, 1 Vent. 203. F. 239

And thus where lands were devised to a wife, provided she remained a widow, and in case she married a second husband, then to the testator's nephew, when he should attain 23; the wife married again while the nephew was under 23, and it was held, that the wife should retain the estate until the nephew attained that age. *Doe v. Freeman and wife*, 1 T. R. 389. F. 240

And see the case of *Jordan v. Holkham*, Amb. 209. where Lord Hardwicke took a distinction between a devise of an estate *durante viduitate generally*, with remainder over, in which case the limitation over is good, and a devise during widowhood, with remainder over on marrying again *within a limited time*; in which latter case, he said, the limitation over operated by way of *forfeiture*. F. 240

And see *Sheffield v. Lord Orrery*, 3 Atk. 282. F. 238
And see CONTINGENCY.

WILL.

Where a man seized of an estate makes his will and devises it, and afterwards conveys it *entirely away*, it is a revocation of his will, though he take it back again by the same instrument or by a declaration of use. F. 68

But note, if equitable tenant in fee cause the outstanding legal estate to be conveyed to him in

fee, this is no revocation of a prior will. Quære, if the conveyance be to uses to bar dower. See Sugden's Vend. and Pur. 141. 4th edit. 150.

A will executed by tenant in tail, between the execution of the deed, making a tenant to the præcipe, and the return of the writ of seisin will pass the lands; and the subsequent recovery is no revocation of the will. *Selwyn v. Selwyn*, 2 Burr. 1131.

F. 368

If copyholder in fee surrender his lands to the use of his will, and afterwards surrender the same lands *to uses*, with remainder to his own *right heirs*, and he then makes his will, and afterwards is admitted to the uses of the settlement, this is no revocation. *Thrustout v. Cunningham*, Bl. Rep. 1046. for the remainder is part of his old reversion. See COPYHOLDS.

F. 68

The word "having," in the statute of wills, 32 H. 8. cap. 1. means having *an interest in*. 3 T. R. 88.

F. 370

And this is shewn by the 34 and 35 of H. 8. cap. 5. which was explanatory of the 32 H. 8. cap. 1. and which declares, that all persons *having* a sole estate *or interest in* lands, may devise. F. 370

In construing the words and effect of a will, it is immaterial what words come first or last, for the construction must be made upon the whole will. *Wealthy v. Bosville*, Rep. Temp. Hardw. 258.

F. 397

And it is a rule never to reject words in a will, if they can stand.

F. 130

It seems that a court of *law* cannot give two different senses, in two different parts of a will,

to the same words. *Goodright v. Dunham*, Dougl. 251.

F. 376

But in the case of *Forth v. Chapman*, 1 Peere Wms. 663. the Court of Chancery gave different constructions to the same words, so far as they respectively applied to real and personal estate.

F. 477

And see also *Pupillon v. Voice*, 2 Peere Wms. 471. where the Court of Chancery gave different constructions to the same words, so far as they respected legal estates and trusts *executory*.

F. 145

And it must be observed, that, although in most cases of marriage articles the Court of Chancery will interfere to prevent the operation of the RULE IN SHELLEY'S CASE (which see), on behalf of the issue, who are considered purchasers for a valuable consideration, yet that in the case of a limitation by *will*, the court will not interfere, as *all* the parties claiming are *volunteers*.

F. 125

Unless in the instance of TRUSTS EXECUTORY, (which see.) And see ARTICLES BEFORE MARRIAGE.

F. 112

A schedule is deemed *part* of a will, and therefore a limitation to the heirs of the body in the schedule will coalesce with a limitation to the ancestor for his life in the will under the rule in *Shelley's case*. *Hayes v. Foorde*, 2 Bl. Rep. 698. B. 73

WORDS.

The following words, in a will, give the beneficial devisee a *trust* estate :

“ Upon trust to pay the rents to a *feme covert*

to her *separate use* during her life. *Henry v. Purcell*, 2 Bl. 1002. F. 57

“Upon trust by equal quarterly payments by and out of the rents, issues, and profits of the premises, (*after deducting rates, taxes, repairs, and expences,*) to pay such clear sum as should then remain to A. for his life.” *Shapland v. Smith*, 1 Brown’s C. C. 75. F. 57

“Upon trust, yearly and every year during the natural life of A. to take and receive the rents, issues, and yearly profits, and to *apply* such rents, &c. *for the subsistence and maintenance* of A. during his life.” *Silvester v. Wilson*, 2 T. R. 444. F. 58

“Upon trust to pay the rents and profits to A. for her *separate use* during her life, and after her death *to pay* the rents to her son during his life, and after his death *to pay* the rents to the heirs of his body, and in default of such issue to *convey* to C. D. in fee.” *Garth v. Baldwin*, 2 Ves. 646. F. 125

“To trustees and their heirs upon trust to raise £500, and subject thereto *to the use* of A. *Wright v. Pearson*, Amb. 358. F. 126

The following words give the beneficial devise the *legal* estate :

“Upon trust to *permit and suffer* A. to *receive* the rents, &c.” *Broughton v. Langley*, 2 Lord Raym. 873. Sed vide *Burchett v. Durand*, 3 Vent. 311. F. 159
F. 210

And a devise to trustees “upon trust to receive the rents, &c. until A. shall attain 21, and then to A.” will give A. the *immediate* legal estate. F. 242
to 246

And for the effect of the word *only*, when attached to an estate for life, followed by a limitation to the *issue*, &c. see *Backhouse v. Wells*, 1 Eq. Ab. 184. Sed vide etiam *King v. Burchell*, F. 152 Amb. 372. F. 163

For the effect of the adverbs of time, "when," &c. "then," &c. see CONDITION—CONSTRUCTION.

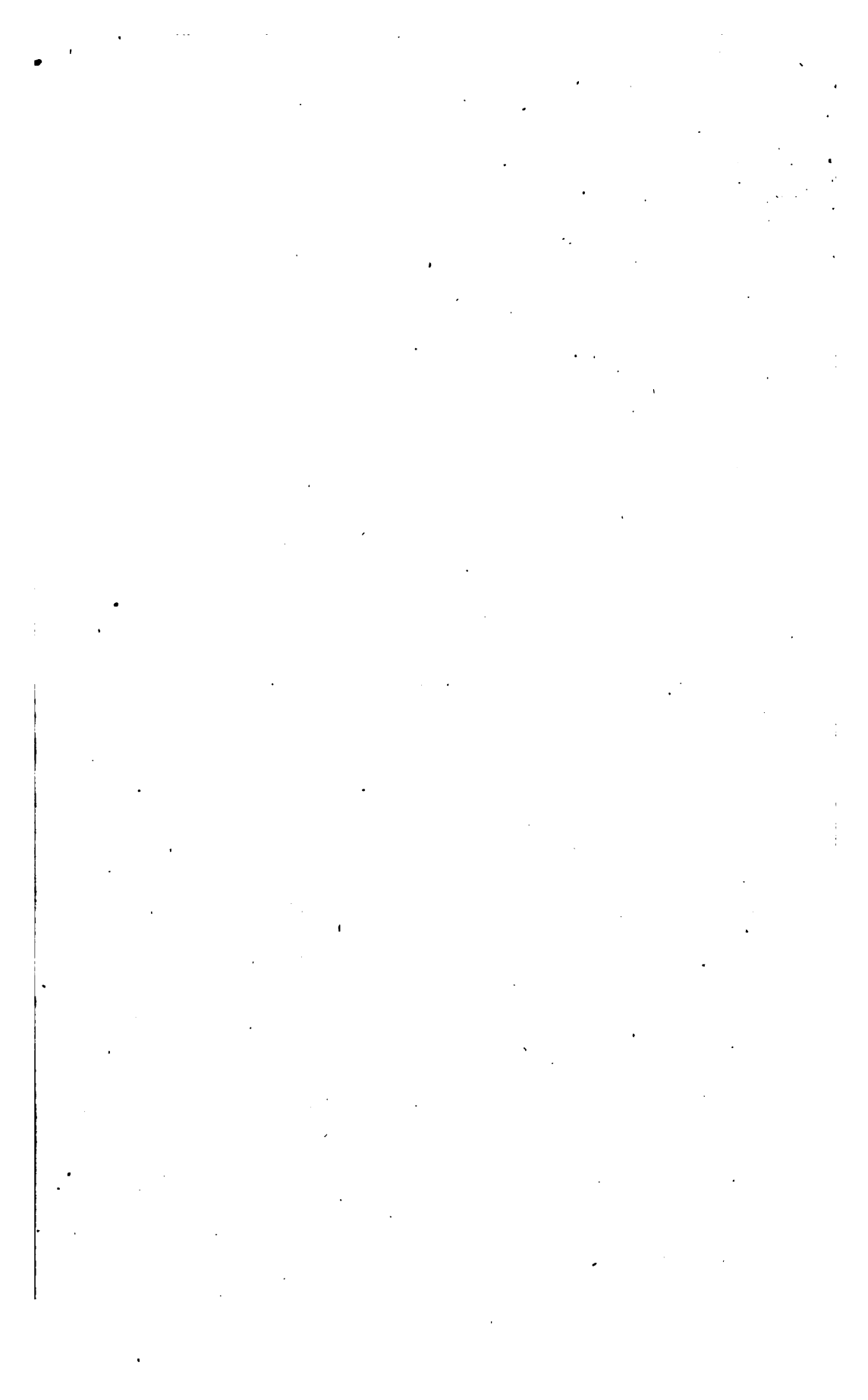
And for the distinction between the adverbs of time, "when," &c. and "then," &c. and the strict word of condition, "if," &c. see *Doe v. Lea*, 3 T. R. 41. F. 246 And see *Ratclyffe v. Bagshaw*, 6 T. R. 512. B. 246

And see also VESTING, TIME AND MODE OF.

And it must be lastly remarked, that although in the case of *Brownsword v. Edwards*, 2 Ves. 243. where lands were devised to trustees until A. should attain 21, and if A. should attain 21, or have issue, then to A. and the heirs of his body; but if A. should die before 21, AND without issue, remainder over, the court read the latter word *and* as *or*, and considered the condition disjunctive, yet that in the case of *Usher v. Jessep*, 12 East, 288; the court refused so to do. F. 506 And see also the case of *Day v. Day*, 16 East, 67. and the cases there mentioned by Lord Ellenborough, where the courts have read the disjunctive word "or" as the copulative word "and."

FINIS.





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